DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS FOR 1987

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS

WILLIAM LEHMAN, Florida, ***Chairman***

MARTIN OLAV SABO, Minnesota	LAWRENCE COUGHLIN, Pennsylvania
WILLIAM H. GRAY III, Pennsylvania	SILVIO O. CONTE, Massachusetts
BOB CARR, Michigan	CARL D. PURSELL, Michigan
RICHARD J. DURBIN, Illinois	FRANK R. WOLF, Virginia
ROBERT J. MRAZEK, New York	

THOMAS J. KINGFIELD, GREGORY R. DAHLBERG, and LINDA J. MUIR, *Subcommittee Staff*

PART 5

Page

DEPARTMENT OF TRANSPORTATION:

Federal Railroad Administration 1
Grants to Amtrak 345

RELATED AGENCIES:

Interstate Commerce Commission 657
United States Railway Association 821

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
59-907 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H181-42

COMMITTEE ON APPROPRIATIONS

JAMIE L. WHITTEN, Mississippi, *Chairman*

EDWARD P. BOLAND, Massachusetts
WILLIAM H. NATCHER, Kentucky
NEAL SMITH, Iowa
JOSEPH P. ADDABBO, New York
SIDNEY R. YATES, Illinois
DAVID R. OBEY, Wisconsin
EDWARD R. ROYBAL, California
LOUIS STOKES, Ohio
TOM BEVILL, Alabama
BILL CHAPPELL, Jr., Florida
BILL ALEXANDER, Arkansas
JOHN P. MURTHA, Pennsylvania
BOB TRAXLER, Michigan
JOSEPH D. EARLY, Massachusetts
CHARLES WILSON, Texas
LINDY (MRS. HALE) BOGGS, Louisiana
NORMAN D. DICKS, Washington
MATTHEW F. McHUGH, New York
WILLIAM LEHMAN, Florida
MARTIN OLAV SABO, Minnesota
JULIAN C. DIXON, California
VIC FAZIO, California
W. G. (BILL) HEFNER, North Carolina
LES AuCOIN, Oregon
DANIEL K. AKAKA, Hawaii
WES WATKINS, Oklahoma
WILLIAM H. GRAY III, Pennsylvania
BERNARD J. DWYER, New Jersey
BILL BONER, Tennessee
STENY H. HOYER, Maryland
BOB CARR, Michigan
ROBERT J. MRAZEK, New York
RICHARD J. DURBIN, Illinois
RONALD D. COLEMAN, Texas

SILVIO O. CONTE, Massachusetts
JOSEPH M. McDADE, Pennsylvania
JOHN T. MYERS, Indiana
CLARENCE E. MILLER, Ohio
LAWRENCE COUGHLIN, Pennsylvania
C. W. BILL YOUNG, Florida
JACK F. KEMP, New York
RALPH REGULA, Ohio
GEORGE M. O'BRIEN, Illinois
VIRGINIA SMITH, Nebraska
ELDON RUDD, Arizona
CARL D. PURSELL, Michigan
MICKEY EDWARDS, Oklahoma
BOB LIVINGSTON, Louisiana
BILL GREEN, New York
TOM LOEFFLER, Texas
JERRY LEWIS, California
JOHN EDWARD PORTER, Illinois
HAROLD ROGERS, Kentucky
JOE SKEEN, New Mexico
FRANK R. WOLF, Virginia
BILL LOWERY, California

Frederick G. Mohrman, *Clerk and Staff Director*

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1987

WEDNESDAY, MARCH 12, 1986.

FEDERAL RAILROAD ADMINISTRATION

WITNESSES

JOHN H. RILEY, ADMINISTRATOR
JAMES C. ROONEY, DEPUTY ADMINISTRATOR
WILLIAM E. LOFTUS, EXECUTIVE DIRECTOR
JOHN M. MASON, CHIEF COUNSEL
LOUIS S. THOMPSON, ASSOCIATE ADMINISTRATOR FOR PASSENGER AND FREIGHT SERVICES
JOSEPH W. WALSH, ASSOCIATE ADMINISTRATOR FOR SAFETY
RAY ROGERS, ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION
THOMAS F. FERRARA, ACTING ASSOCIATE ADMINISTRATOR FOR POLICY
ROBERT KRICK, ACTING DIRECTOR OF RESEARCH AND DEVELOPMENT
S. MARK LINDSEY, ASSISTANT CHIEF COUNSEL
WILLIAM R. BALLERINI, DIRECTOR OF BUDGET DEVELOPMENT AND PROGRAM REVIEW

Mr. LEHMAN. The Subcommittee will come to order.

This morning, we will receive testimony on the fiscal year 1987 budget request of the Federal Railroad Administration.

Our principal witness today is the Administrator, Mr. John H. Riley.

We will be pleased to hear your statement at this time. You may read it, or, if you would prefer to summarize it, we shall insert your entire statement in the record. You may introduce your staff people with you today.

Mr. RILEY. Thank you very much, and I will introduce it into the record, rather than reading it.

To my right, Jack Mason, our Chief Counsel; Tom Ferrara who is our Acting Head of Policy; my deputy, Chris Rooney who has been here with me before; on my left, the man who heads our Safety Division, which is unquestionably our most important division, Joe Walsh; on his left, Lou Thompson who does the passenger end of the operation in the Northeast Corridor.

I am not going to take the time to re-read the numbers you already have in the opening statement, but I would like to make some brief opening comments.

Mr. LEHMAN. Surely.

Mr. Riley. We are all grateful for the opportunity to come before the committee, and I have to say, I testify about eight to ten times a year before different committees, but there is no doubt that the two days we spend before this committee are always the most challenging because they are the most thorough, and I really think I probably have learned more about my own agency, in preparation for these hearings, than I have learned from any other stimulus.

1985 FRA ACCOMPLISHMENTS

I am not going to place verbally, in the record, what I have already placed in writing: our requests and their justifications. They will be explored in your questions.

I do want to take a moment, however, before we look forward to the next year, to look back on 1985, and review, briefly, how we used the resources that the committee allocated to us over the last 12 months.

The first time I testified before this committee, two years ago, I told you that we had two fundamental commitments.

The first was to concentrate our efforts on the issues of longest-standing before FRA, the issues that had been before the agency for the longest time, to try to bring them to a final conclusion.

Secondly, that in dealing with those issues, we were going to listen very carefully to all sides, but that we would not seek compromise. That we would seek the solutions that were, in our best judgment, final and fair solutions to the issues. 1985 was the year when that came to fruition on so many fronts, and it really was a historic one for this agency.

It began in Anchorage, Alaska on January 7th, when Governor Bill Sheffield of Alaska, and I signed the agreement which transferred ownership of the Alaska Railroad from the Federal Government to the State of Alaska.

One month and one day later, on February 8th, Secretary Dole announced her decision, after a lengthy selection and review process, to recommend the sale of Conrail to the Norfolk Southern. While that certainly was the Secretary's decision, I can tell you that Jim Burnley, the Deputy Secretary, Chris Rooney, my Deputy, and I, who also worked on that, were in complete accord with the Secretary's views. It represented a consensus of our policy team, if you will.

Although most of the attention that the agency has attracted in the last year has gone to railroad sales, and I think that is unfortunate, most of our time and effort, and I think our most satisfying accomplishments, came in the area of safety.

The agency completed four major rulemakings in the course of the last year. The most significant, I think, and probably the most controversial, was the issuance of a final rule on alcohol and drug use in the railroad environment, and that ended, at least as far as we are concerned, a 12-year debate on how that problem should be addressed.

In addition, we have completed work, and are now in the process of legal review on final rules, on end of train markers, and the use of modern telemetry devices to monitor the condition of a railroad's brake systems, devices which I think hold the prospect of a much greater margin of safety in railroad operations.

We also made some alterations in the discolored wheel rules to prevent unnecessary removal of wheels which, while discolored, did not prove to be defective upon analysis.

We think that change has put more money into the pockets of consumers who have to pay the fixed cost of railroads.

We also rejected several petitions. We rejected an Association of American Railroads' petition to entirely do away with our rules on the removal of overheated wheels.

And we rejected a labor petition to require inspections and to create standards for grade-crossing equipment.

In the course of the last year I, unfortunately, had to issue two emergency orders. One required the retrofit of several thousand hazardous material tank cars which were found, on inspection, to have significant safety defects.

We weathered that. I think it did create some inconvenience for people who were relying on those tank cars, but we avoided the serious accident, and that was the reason we acted originally.

Over this past weekend, we reached a cooperative agreement with the SEPTA system in Philadelphia to take some immediate action and address some serious safety problems that had arisen on that system through the use of hollow axle vehicles.

And I cannot say enough about the cooperation that we had received from SEPTA in addressing that problem. The retrofit of those vehicles is now under way, and we believe that the provisions of that emergency operating order will be able to be lifted in three to four weeks at the latest.

ACCIDENT STATISTICS

But of all the technical things that were done in safety this year, the most significant accomplishment is in sheer numbers.

In each of the last three years, I have been able to come before you and tell you that accident statistics have improved across the board, but I have never been able to bring you numbers quite like the ones I am about to read you. Because we have a 90-day reporting requirement, we are just now getting our final numbers from 1985, but preliminary totals—and I believe these will be very, very close to the final totals, suggest the following: Rail-related fatalities last year were down 17.2 percent to the lowest level we have ever recorded, and that is down more than 37 percent from 1978, the last year prior to the implementation of the Staggers Act.

Employee fatalities were down 22 percent. They are down 62 percent from the pre-Staggers records. Grade crossing fatalities which had risen last year—and that was a concern to us—are down 12.2 percent this year, 48.9 percent from their pre-Staggers numbers.

Employee work place injuries, down 4.4 percent this year, and down 31 percent from pre-Staggers.

Finally, train accidents. I think this is the most important figure because, truthfully, injuries and fatalities are often almost a matter of chance in an accident. Whether a man is sitting or standing when the impact occurs, factors of that nature control the seriousness of the accident.

The base number that, in my judgment, measures improvement or lack thereof in railroad safety, is train accidents. Train accidents fell 11.2 percent last year, and the accident ratio in this industry has been cut 70 percent from the last pre-Staggers year. For all the newsworthy accomplishments that we believe we have recorded in other fields, none is more satisfying than this reduction in accident statistics. I have become convinced, in my time at FRA, that safety is really the ultimate cost-benefit issue, because there is a finite amount of money out there that the industry can, or will, spend on safety.

Our rules and regulations have an enormous impact on where they will spend that money, and we very carefully weigh where we are going to move next in our safety rulemaking process.

Because if we choose the second, third, or fourth most significant area, we have actually hurt safety by not focusing our resources where they can do the most good.

Last year, my judgment was that the alcohol and drug rule, and the end-of-train devices were the areas where our time, and the industry's dollars could be best spent to produce real safety results.

We have concluded that this year, 1986, a thorough examination of communications, technologies and practices in the industry represents the area where we can best devote our resources, and it is our hope to continue to report the downward movement in these statistics, when I come back before you next year.

NORTHEAST CORRIDOR AND UNION STATION PROJECTS

Finally, two projects close to home, Washington being home for the purpose of that statement, were completed, or at least advanced significantly in the last year.

FRA completed its responsibilities in the $2.1 billion Northeast Corridor Improvement Project, and I think that is really one of the great civil engineering accomplishments of our era.

Responsibility for the completion of that project, and any further actions on it, have been transferred to Amtrak.

We have also taken major steps toward completion of the Union Station project. In the course of the last year, construction on the semi-complete garage has been resumed. The station is now a self-sufficient ongoing project. The developer has been selected, and if you were inside the station this morning, you would see the demolition work has begun. We are now tearing out the National Visitor's Center improvements, refilling that large pit that used to exist in the floor of Union Station, and preparing to rebuild the inside of the station in a manner that is fully consistent with Burnham's designs.

I am certain that you will be here in 1988—I do not know whether I will be or not—but if in fact we all are, we will be going down to see the reopening of that station in 1988.

It was fun to do all of this, although it was tiring at times, but it certainly was an historic year by FRA standards. I have gone through all of these accomplishments, not in an egotistical sense, because I have to tell you that administrators of all agencies get a lot more credit for accomplishments than they deserve.

The people who really earn those accomplishments are seated on my right and seated on my left.

Mr. **Lehman**. And in back of you.

Mr. **Riley**. And in back of me; that is absolutely correct. But I raise them because I think the committee has a right, and we have an obligation to account, not just for what we would like to spend this year, which will be the topic for the remainder of the day, but to account for what we spent in the last year.

I think, Mr. Chairman, that I can come up here with confidence and tell you that the dollars were well spent, and we intend to spend the resources we request next year every bit as well.

[The prepared statement follows:]

TESTIMONY OF JOHN H. RILEY
ADMINISTRATOR
FEDERAL RAILROAD ADMINISTRATION
BEFORE THE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

MARCH 12, 1986

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to present the Federal Railroad Administration's (FRA) budget request for FY 1987. FRA's request for $50.5 million and 660 positions is most austere in light of the Balanced Budget and Emergency Deficit Control Act of 1985, or the Gramm-Rudman-Hollings Act as it is popularly known.

As you know, Mr. Chairman, the President is committed to reducing the deficit in compliance with the Act but still facilitating a safe and efficient national transportation system. As stated in his FY 1987 Budget to Congress, an integrated and efficient national, State and local transportation network requires the combined and cooperative efforts of all the parties concerned, the Federal, State, and local governments and the private sector. Each level of government should concentrate its efforts on the transportation facilities and services for which it is appropriately responsible with the Federal government concentrating on the interstate transportation system.

In terms of resource allocation, safety is a key focus of FRA activities. However, FRA's role is also promotion of an efficient and competitive rail transportation environment by acting as a catalyst in railroad technology development and innovation, and encouraging State and local governments and rail industry's labor and management to act together for the common good and public benefit. FRA's mission further requires us to study proposed regulatory changes and the impact of railroad developments on the transportation industry, monitor rail traffic, provide economic forecasting and study the financial condition of individual railroads and the industry as a whole. Since we met last year, I am proud to say that FRA has gone through a very intense and successful year in achieving these goals. Before I discuss FRA's FY 1987 budget, I want to share some of our recent achievements as well as our future plans with the Subcommittee.

RAILROAD SAFETY

FRA's safety staff, Executive Director and lawyers made outstanding progress in all aspects of our safety program: rulemaking and enforcement, Operation Lifesaver, and civil penalty assessments and collections, and labor-management activities.

Assessments based on preliminary data for 1985 indicate that overall train accidents decreased 11.2 percent in 1985 compared to 1984, from 3,712 to 3,295. When normalized by train miles, which decreased by 5.0 percent, train accidents decreased by 6.6 percent. Total rail related fatalities decreased by 214, from 1,247 in 1984 to 1,033 in 1985, a decrease of 17.2 percent. This exceptional progress in safety performance has been the trend for the past five years thanks to the improving financial health of the industry and combined efforts of labor, management and Federal and State governments in safety compliance and enforcement.

You may recall that in 1984, trespasser fatalities continued to increase and rail-highway crossing fatalities showed an increase for the first time in 6 years. To counteract these developments, FRA's field support of Operation Lifesaver, a public education program which focuses on grade crossing safety, was emphasized. FRA inspectors participated in over 1,000 Operation Lifesaver presentations in 1985. As part of these Operation Lifesaver presentations, FRA personnel also informed school and civic group audiences about the dangers of trespassing on railroad property. We believe that these presentations played a major role in the 1985 decrease in rail-highway crossing and trespasser fatalities.

Preliminary data further indicate that 1985 rail-highway crossing accidents, fatalities, and injuries decreased when compared to 1984. The number of crossing accidents decreased 5.0 percent from 7,281 to 6,920, a decrease of 361; the number of fatalities decreased 12.2 percent from 649 to 570, a decrease of 79; and the number of injuries decreased 8.8 percent from 2,910 to 2,655, a decrease of 255.

Despite these ongoing efforts and the decrease in 1985, rail-highway crossing and trespasser fatalities continue to comprise over 90 percent of all railroad related fatalities. FRA's continuing concern about public safety at rail-highway grade crossings, therefore, prompted us to again hold public hearings in 1985 to explore all feasible alternatives to improve this situation. We published a report, in July 1985, Rail-Highway Crossing Safety Report, which documents Department and FRA policy as well as current and proposed initiatives. On July 16, 1985, Secretary Dole announced a new initiative, a series of demonstration projects that utilize the low cost corridor approach to rail-highway crossing safety. FRA has worked with FHWA in establishing projects in several disparate locations from Florida to Alaska. And FRA will continue to emphasize Operation Lifesaver with FRA inspectors making even more presentations in 1986.

On the enforcement side, FRA has continued its intensive hiring efforts to maintain the level of safety inspectors at the authorized level of 325 in track, signal, equipment, hazardous materials and operating practices disciplines. FRA is continuing its effective coordination of Federal and State inspection activities and supplementing ongoing inspections with at least three comprehensive systemwide assessments of selected railroads and 10 to 20 more specific assessments each year.

In some situations, the best method for obtaining compliance with rail safety laws is assessment of civil penalties. In 1985, FRA made significant improvements in the civil penalty process. To facilitate monitoring, reporting, evaluation, and planning every facet of the process has been computerized--from receipt of the inspector's report recommending a civil penalty to assessment of the penalty and collection of the penalty. And to manage the large caseload, with the cooperation of the railroads, we have successfully implemented an annual cycle whereby final action is taken on each violation report by the end of the year following the one in which it was received. These measures helped FRA to liquidate a large backlog of older claims and to impose a comprehensive management scheme on the process. The result is that FRA is more current in its handling of civil penalty cases than it ever has been.

In nearly all cases, initial assessments of civil penalty are resolved through negotiations with carriers and shippers leading to a compromise, as authorized by the rail safety statutes. The negotiation process provides an opportunity for a valuable exchange of views on safety issues and often produces specific commitments to improve compliance. In FY 1985, FRA collected $6,142,550 in civil penalties, more than it has collected in any year since 1980 and the third highest total in its history.

FRA is continuing its active safety regulatory program to ensure that it keeps pace with technological development and operational change--indeed, after an examination of the program during the past year, the DOT Inspector General gave it high marks.

In 1985, FRA published a final rule addressing the problem of alcohol and drug use in railroad operations. This carefully developed rule was the culmination of an extensive investigation and rulemaking proceeding that began in June of 1983. The rule will aid in the detection of alcohol and drug use among railroad operating employees, and more importantly, save lives by deterring these employees from operating trains while impaired by alcohol and/or drugs. This rule was challenged -- and with the recent action of the Supreme Court we are now able to implement it.

Following issuance of the rule, FRA held five seminars across the Nation to introduce the rule and accompanying field manual, attended by 2,000 interested parties including union officers, railroad representatives and FRA Safety inspectors.

In addition to the alcohol and drug rule, FRA has been actively engaged in other important safety regulatory efforts in 1985. These efforts resulted in:

- a final rule, making a technical but significant change in the Freight Car Safety Standards to aid in the identification and removal of thermally abused wheels;

- two final rules designed to reduce the regulatory burden on small railroads; and

- a report on rail-highway grade crossing safety following a special safety inquiry regarding possible future courses of action to enhance public safety at rail-highway crossings.

FRA published two Notices of Proposed Rulemaking on the implications of operating freight trains without cabooses. Recent collective bargaining agreements permit railroads to do without cabooses on a large percentage of freight trains. One of these Notices would amend the rear end marker and blue signal rules to (i) clarify the equipping and inspection provisions, (ii) revise the inspection requirement to permit either a visual observation or a radio telemetry verification, (iii) permit expansion of the categories of employees authorized to conduct the visual observation, and (iv) permit the use of a new procedure to protect those making this inspection. The other Notice of Proposed Rulemaking would permit the use of a telemetry device to determine the application and release of the brakes on the rear car of a train during the intermediate airbrake test. We anticipate issuing final rules in both these dockets in the near future.

In other current regulatory proceedings, FRA is examining (i) the safety implications of permitting certain intermodal tanks to carry hazardous materials in Trailer on Platcar/Container on Flat Car service, and (ii) the appropriate criteria for determining when freight car wheels are defective as a result of excessive heat. In addition, FRA has also prioritized three key safety issues: hazardous materials car placement in a train consist, crew safety in locomotives and radio communications.

In 1985, FRA saw a series of very significant court decisions in defending the Federal rail safety program. With the recent action of the Supreme Court we are now able to implement the alcohol and drug rule. In a suit brought by rail labor organizations challenging FRA's exercise of prosecutorial discretion, the Ninth Circuit Court determined that rail employees and their organizations lack standing to sue FRA to compel it to enforce the rail safety laws in the manner they deem proper. In another serious challenge to the integrity of the Federal safety enforcement program, FRA prevailed in four nearly identical cases related to job losses brought by the Brotherhood of Railway Carmen in various locations across the country. Plaintiffs charged that, as a result of the furlough of carmen, train inspections were now being done by trainmen, whom they alleged to be unqualified. None of the courts found an emergency situation or even serious safety issues to exist, and those that ruled on the issue found that FRA was properly enforcing the law. The courts unanimously ruled that plaintiffs lacked standing to press their non-emergency claims. Two similar cases were abandoned by the plaintiffs after the initial pleadings were filed. FRA also prevailed in district court in a suit brought by rail labor challenging FRA's intepretation of the sleeping quarters provision of the Hours of Service Act.

FRA's current litigation caseload which will continue into the future includes: rail labor's appeal in the alcohol and drug case, challenging the testing provisions; rail labor's appeal of the District Court decision in the sleeping quarters case; a similar sleeping quarters case at the district court level in another jurisdiction; and a railroad's suit challenging FRA's finding that the railroad "knowingly" violated provisions of the Hazardous Materials Transportation Act.

RESEARCH AND DEVELOPMENT

In 1985, following an internal management review determination we moved our research and development activities under the executive direction of the Associate Administrator for Safety. As a result, we propose in our FY 1987 budget to merge the Railroad Safety and Railroad Research and Development appropriations into a single account. This will permit a closer linkage, from concept to implementation, between safety research and the rulemaking process. Some of our major R&D efforts during the past year included research into: the safety of equipment used to transport hazardous materials; the potential problems associated with the increasing use of intermodal transport for hazardous materials; the equipment required for the safe operation of cabooseless trains; and improved safety in the locomotive cab environment.

FRA also has been monitoring advances in the use of new microprocessor- and communications- based train control systems in the railroad industry. Several proposals are being developed by the industry in the hopes of establishing even greater opportunities for improved safety in train movements. In 1986, FRA will continue its review of this important development, as well as study incremental improvements to conventional radio voice communication for train control.

CONRAIL

Mr. Chairman, this past year has been another year of very intense activity in the Administration's efforts to sell Conrail. Shortly before we met with this Committee last year, Secretary Dole had announced that she had chosen the Norfolk Southern to purchase Conrail. During the past year we have testified on numerous occasions before six Congressional Committees on all aspects of the Conrail sale, met with the Governors, or their representatives, of virtually every state served by Conrail, and with many of Conrail's shippers to discuss the implications of the sale.

The Justice Department has reviewed in depth the competitive aspects of the sale and provided guidance to us and to Norfolk Southern as to track divestitures and other market access conditions that must be met to prevent a lessening of competition. The divestiture agreements recently finalized by the Norfolk Southern Corporation with the Pittsburgh and Lake Erie Railroad and Guilford Transportation Industries will not only preserve the current level of competition to meet the Justice Department requirements, but will have the decidedly procompetitive effect in that they break the monopoly that Conrail has enjoyed in providing single line service between the Northeastern and the Midwestern regions of our country. Assistant Attorney General Ginsburg of the Antitrust Division has given preliminary approval of the sale saying that the Norfolk Southern divestiture plan "appears to create long-term viable and competitive service for affected shippers." We are anticipating that Justice will complete its verification review of these agreements this spring and that the Congress can conclude its review and oversight process without delay, in fairness to all the parties involved.

The Department of the Treasury submitted a revenue estimation of Conrail's sale to the Norfolk Southern Corporation. They estimated that under current law, on a present value basis, the Treasury might forego receipts of about $125 million in tax revenues as a consequence of Norfolk Southern's ability to consolidate its tax returns with those of Conrail. This results because Norfolk Southern currently pays significant taxes while Conrail is likely to continue producing net operating losses for tax purposes well into the future.

On February 4, 1986, the Senate passed legislation authorizing the sale of Conrail to Norfolk Southern. The Department considers the Senate's approval of the sale to be a major step forward particularly since the sale would produce in excess of $1.2 billion current receipts at a time when we are working so hard to reduce the Federal deficit.

We expect to complete the sale of Conrail in 1986. Post Conrail activities would include a broad range of duties and responsibilities to assure consistency with all covenants of the sale agreement and legislative mandates. Specific activities would focus on monthly monitoring of Conrail's operating and financial performance, periodic assessment of its cash accounts including cash flow adequacy and quality; review of its track and equipment maintenance expenses, capital improvement program compliance; asset dispositions and acquisitions; dividend policy; requests for waiver, divestiture and diversion trend assessments; service continuation and any other requirements Congress or the Department may ultimately impose.

RAILROAD DEREGULATION

FRA has participated in a number of key proceedings at the Interstate Commerce Commission (ICC), including: rulemakings concerning the adoption of the historic agreements between railroads and shippers resolving concerns with the implementation of regulatory standards in the areas of joint rates and competitive access; and the criteria for judging market dominance.

FRA also provided the Departmental witness on the potential competitive impacts of the proposed merger between the Southern Pacific and Santa Fe Railroads. The Department's analysis and recommendations in that proceeding provided the groundwork for a subsequent agreement reached by the merging railroads to remedy any likely reductions in competition as a result of the transaction. The agreement, which closely follows our recommended solution, was a negotiated private sector arrangement that permits another competitor to solicit traffic from the shippers involved. This arrangement, if approved by the ICC, is a positive example of how parties to a merger transaction can work out competitive concerns within the scope of an ongoing merger proceeding.

In the coming year, FRA will continue to monitor developments under the Staggers Act and conduct analyses to support development of FRA and DOT positions on issues related to rail regulation, including regulatory proceedings as well as legislative initiatives. Projects will range from evaluations of any proposed mergers between railroads, or between railroads and carriers of other modes as they may arise; economic research and projections of the effects of actual and proposed regulatory changes on shippers and the railroad transportation initiatives such as container trains, the use of longer truck combinations on the highways, and increasing rail-barge or rail-truck cooperation and coordination. During FY 1987 priorities will again be placed on legislative comment, including scrutinizing legislative proposals for amending the Staggers Act or supplementing the Act altogether by augmenting the anti-trust laws. Sunset of the ICC will also require substantial effort to effect the transfer to DOT of a major portion of the remaining ICC functions.

RAILROAD RESTRUCTURING

In the past year the Milwaukee Railroad Reorganization Court approved the Soo Line's purchase application. The FRA challenged the Soo Line's original settlement proposal, which would have permitted cash payments to junior creditors ahead of FRA claims. As a result of vigorous defense of the government's claims and FRA negotiations with Soo, an agreement was reached accelerating repayment of debt obligations to the United States on terms and conditions favorable to the government. Detailed financial analyses and valuations were conducted for the CNW/Milwaukee and Soo/Milwaukee potential acquisition agreements as a basis to negotiate terms of repayment of the Milwaukee debt owed to the United States. Other restructuring activities in connection with the Santa Fe-Southern Pacific merger case also included extensive *pro forma* analyses of applicants and other affected railroads.

UNION STATION

During the past year, the Department signed a development agreement with Union Station Venture, Ltd., designating it as the station's developer. The Union Station Redevelopment Corporation (USRC) signed a sublease of Union Station with the developer for an initial term of 29 years with 5 optional renewal periods of 14 years each. The developer has undertaken the obligation to operate and maintain the station and a sinking fund has been established to assure that future replacement of capital items is funded. This will take Union Station off of the Federal budget sometime in the foreseeable future after the facility becomes operational.

Other progress on the facility includes:

- The District of Columbia Department of Public Works is making good progress on construction of the parking garage which is scheduled for completion in the fall of 1986.

- USRC awarded a demolition contract to clear the way for the construction contract we plan to award this spring. The contractor has removed construction obscuring historically and architecturally valuable features of the building and excavated the foundation for a cinema complex on the lower level.

- Final design for rehabilitation and renovation of Union Station by USRC and for improvements to be made by the developer is to be completed by March 31, 1986.

- We expect USRC to award the main construction contract for rehabilitation and renovation of Union Station in May of this year. (We anticipate that bidders will have the month of April to prepare and submit their bids.)

NORTHEAST CORRIDOR IMPROVEMENT PROJECT

I am happy to report that we achieved a major milestone in NECIP. On September 30, 1985 FRA transferred to Amtrak responsibility for completing the remaining right-of-way improvements under the $2.2 billion Northeast Corridor Improvement Project (NECIP). Under FRA's management, $1.9 billion of the total appropriation was expended. This work has resulted in safer, more dependable and faster corridor service than at any time in the past. Ridership in 1985 was up over 4 percent from 1984 levels. Between 1976, the year legislation authorizing the Project became law, and 1985, ridership increased by 15 percent.

Northeast Corridor traffic is currently 54 percent of total Amtrak ridership.

Track work completed before the transfer included the installation of 410 track miles of concrete ties, 735,000 wood ties and 535 track miles of continuous welded rail, undercutting of 494 track miles, cleaning of 271 miles of shoulder ballast, surfacing of 634 miles of track for high-speed operations, extensive ditching to improve drainage, realigning 22 curves and reconfigurating of 30 interlockings. Eight bridges were replaced, including two that open for marine traffic, while over 150 were rehabilitated/repaired. The notorious B&P Tunnel in Baltimore, opened in 1873, was completely restored. No trains have been delayed at the tunnel since its reopening in the summer of 1984. Fencing was installed at critical locations to limit pedestrian access to the right-of-way. All highway at-grade crossings between New York and Washington were eliminated. A few remain north of New York. Eight of thirteen station projects were completed. (Of the five that remain, four are being built under cooperative agreements among FRA and state or local agencies.) Four new maintenance-of-way bases at strategic locations along the Corridor now dispatch crews to maintain the right-of-way. The electrification, communications and signaling systems have all undergone significant upgrading. Equipment service facilities at Boston, New York and Washington, begun prior to the transfer, will be completed by Amtrak.

During 1986 FRA will:

- Continue the rehabilitation of NEC railroad bridges. Within the State of Connecticut, design and construction work for five bridges is being funded under an agreement between FRA and the State. The bridges are in territory not owned by Amtrak but used by Amtrak trains.

- Complete and dedicate a new station at Providence, Rhode Island. The station, located on a new alignment, is an integral part of the redevelopment of downtown Providence.

AMTRAK

The economic realities that led the Department of Transportation to recommend no funding for Amtrak in last year's budget have not changed, and we request no funding for Amtrak in fiscal year 1987.

Despite significant improvements in its operating efficiency over the past four years, Amtrak continues to lose more than $600 million annually, with no end in sight. These numbers actually understate government's long-term exposure, since the $600 million figure is comprised almost entirely of operating losses. Amtrak faces significant capital investment needs over the next few years, needs which the federal government would also be asked to finance. At a time when we must work together to meet the essential deficit reduction targets in Gramm-Rudman-Hollings, the federal government simply cannot commit more than $3 billion to subsidize Amtrak's operating losses over the next five year budget cycle.

Termination of Amtrak subsidies does not in and of itself mean an end to Amtrak service. It is essential, however, for those interested in continuing Amtrak service to be realistic about the choices, and their need to take the initiative should they wish to maintain service in the absence of federal financial support. Amtrak cannot be run without subsidy. While changes in work rules and operating procedures could enable Amtrak's losses to be reduced, subsidy needs would remain substantial even under the best of circumstances. I said a year ago that FRA would devote its full energies, as well as its analytical and intellectual resources, to working with states, localities, regional or private groups to develop a transition plan should they wish to step into the federal government's role as subsidizer. That offer still stands, and we are sincere in our offer of logistical assistance should any group wish to take that initiative.

Should no party step forward to replace the federal government as subsidizer of Amtrak services, the corporation would, in all likelihood, declare bankruptcy, and a Trustee would be appointed to manage its affairs. As in any other bankruptcy proceeding, the Trustee could be expected to seek preservation of service in areas where any private party or regional compact offered to take responsibility for Amtrak operations. In other cases, the assets would be applied to the obligations of the estate. Without total subsidy termination and the opportunities offered through liquidation of the Amtraks assets, the Federal government would continue to pour billions of dollars more into Amtrak.

One fact is clear -- that in the face of annual deficits approaching $200 billion, the federal government cannot continue to invest more than one-half billion annually in Amtrak operating subsidies.

Mr. Chairman, I have given the Committee a look at perhaps ten of the major accomplishments of FRA which were highly visible over the past year. There are dozens more significant administrative, technical and personnel achievements that time doesn't permit me to itemize, although that does not diminish their importance. I do want to add that no organization could survive without the kind of dedicated people that persevere in their daily work behind the scenes -- some call it the trenches -- and whom others rarely see or hear.

Mr. Chairman, I will now discuss my budget request for FY 1987.

FRA's budget request for FY 1987 encompasses $50,491,000 in budget authority plus $6,875,000 of unobligated balances to support the current operating level in FY 1987, and 660 permanent positions. The detail by appropriation follows.

OFFICE OF THE ADMINISTRATOR

The request for the Office of the Administrator appropriation is $10,958,000 in budget authority plus $5,875,000 of unobligated balances transferred from other accounts. With many of FRA's Federal financial assistance programs being eliminated or phasing down, it is proposed to merge the personnel and activities previously carried under "Rail Service Assistance" with the Office of the Administrator account.

The request for the "Salaries and Expenses" activity of $11,033,000 includes $9,723,000 in budget authority and $1,310,000 of unobligated balances from the Rail Service Assistance appropriation to support 196 permanent positions, a decrease of 8 positions from the comparable FY 1986 level; these positions are associated with Amtrak activities for which we are requesting no funds in FY 1987.

The request for "Contractual Support" of $1,180,000 in budget authority is primarily computer related costs for economic analyses and forecasts, monitoring railroad traffic and the financial condition of the railroad industry, and special studies associated with mergers, deregulation and reregulation and Interstate Commerce Commission regulatory proceedings.

For FY 1987 we are requesting $4,620,000 for Washington Union Station rent and maintenance, of which $4,565,000 will be transferred from Conrail Labor Protection unobligated balances. Of this amount, $3.5 million will be available for the rental payment and $1,120,000 will be available for maintenance, operation and security services.

RAILROAD SAFETY

The FY 1987 budget continues to emphasize FRA's safety mission with enhanced resources to further improve our capabilities in regulatory and enforcement activities. The FY 1987 budget combines Research and Development with Railroad Safety in a request for $35,819,000 in budget authority, plus $1 million carryover and 464 permanent positions. This is a net decrease of $895,000 in budget authority and an additional six positions from FY 1986 levels.

FRA's request of $22,364,000 for Federal safety enforcement will provide for 385 field personnel positions, an increase of 6 positions. Federal enforcement of railroad safety regulations and standards have undergone extensive adjustments over the past four years to accommodate dramatic changes in the industry brought about by economic deregulation and system restructuring. These organizational and technological changes in industry operations have created new demands on FRA field offices, such as the National Inspection Plan, Systems Inspections, Safety Conferences with railroad management and labor representatives, and special training and counseling programs. So that we may manage these additional demands more effectively, FRA is requesting additional positions for five Deputy Regional Directors and one training specialist in alcohol and drug abuse.

The remaining Safety program funding will provide $1.2 million to permit continued operation and maintenance of one automated track inspection vehicle over 25,000 miles of track; and $3,674,000 in headquarters support to be used for maintaining 64 headquarters personnel positions and to upgrade accident and regulatory analysis capabilities. Although FRA proposes to eliminate the Federal cost-sharing portion of the State inspection program, we will continue to train state inspectors and coordinate State inspection plans with national programs. In FY 1987 we will continue systemwide and task force assessments to address safety problems of a systemic nature. We are proceeding on phase two of a contract that will enable us to assess high risk areas and deploy our inspector resources more effectively.

For FY 1987, $9,581,000 and 15 permanent positions are requested for the Research and Development activity. This will enable FRA to continue support of safety rulemaking activities with essential research concerning track, equipment, operations, hazardous materials, and track-train testing. The recent quantum advances in railroad technology and operations present FRA with the need to focus resources on evolving new technologies and more sophisticated railroad operations. We will continue to work to anticipate safety problems and mitigate threats to public safety in advance of the occurrence of potentially catastrophic accidents. Our current and planned research in areas such as nuclear waste casks, hazardous material tank cars, wheel safety testing, vehicle safety testing, and emergency response procedures, are prime examples of the new direction we have taken in our R&D program. Where such research yields a collateral economic benefits to the railroad industry, we will continue to work with the industry and the Association of American Railroads to bear a share of project expenses.

FEDERAL FINANCING BANK, DIRECT LOANS

This year, each agency's budget must reflect the agency's guarantee of direct loans made by the Federal Financing Bank (FFB). For FRA, the FFB disburses direct loans to private freight railroad companies backed by FRA's guarantee of the loans under Section 511. In FY 1985, FRA made commitments to guarantee $2.5 million in loans by the FFB and in FY 1986 we expect to make commitments to guarantee $3.8 million. The budget authority in this account, $1.6 million in FY 1986 and $3.8 million in FY 1987, represents the cash drawdowns that we anticipate will be made against the Section 511 loans guaranteed by FRA.

GENERAL PROVISIONS

Section 310 of the Department's General Provisions would authorize the Secretary to sell Union Station to the private sector. We now hold Union Station under a long-term lease from subsidiaries of Penn Central and CSX. In order to redevelop the Station we will have to acquire title to it by buying out the owners' interest. Section 310 would not disturb any existing agreements with the Union Station Redevelopment Corporation, the developer, Amtrak and the District of Columbia. Authorizing legislation is contained in Section 137 of H.R. 4144, the Surface Transportation Reauthorization Act of 1986. Acquisition of the facility and the proposed future sale would be subject to approval of the Appropriations Committees.

Mr. Chairman, this completes my prepared statement. I will be happy to answer any questions the Committee may have.

CONRAIL PRICE

Mr. **Lehman**. Thank you, Mr. Riley.

We will begin this morning by discussing the Conrail sale. Over the past several years, we have gone into considerable depth with you and with Secretary Dole on your sale proposal.

I do not think we need to revisit all of those issues again this morning. But one of my main concerns is Norfolk Southern's $1.2 billion purchase price.

Many judge it to be too low. I know you feel that the Norfolk Southern bid is superior to the others for reasons other than price.

My question to you is: At what level should price become the predominant consideration?

For instance, what if Morgan Stanley found additional investors and increased its bid to $2 billion, or more?

Is there no price within reason where the Morgan Stanley offer as currently structured becomes attractive?

And I was talking to Greg this morning, that it now has been over a year since the $1.2 billion offer from Norfolk Southern has been on the table. Certainly nothing else has stayed at the same price over a year's time.

Now, there is nothing magic about $1.2 billion, and I just wonder, if oil prices have changed, if the Dow-Jones average has changed, why hasn't the value of the Southern offer changed in relation to the price offered a little over a year ago?

Mr. **Riley**. Mr. Chairman, let me start with your overview and then walk down to the specific, and your overview question was, at what level should price become the predominant consideration?

I have to tell the committee that price has never been the predominant consideration for the Secretary in viewing these Conrail offers.

It has always been our view—and I say our, because I think I can speak for the Secretary and myself on this—that privatization does not mean selling a government asset to the first person who comes in and offers to buy it.

Nor does it mean selling it necessarily to the highest bidder, if there are elements of that bid that do not serve the public interest.

Government did not buy Conrail as an investment to see how much we could yield on the re-sale. Government took ownership of Conrail stock as a trustee for the public interest, and we have always viewed it essential to sell the company in the way that is most consistent with the public policy goals that led government to support that company in the first place.

CONRAIL'S FINANCIAL PERFORMANCE

Now over the last 12 months, there is very little in Conrail's performance that would lead anyone to reestimate the price that was bid for the company a year ago. When those bids were put on the table, they were based on projections that Conrail would perform a certain way over the past year.

Conrail's performance has tracked those projections very, very closely. There were no surprises over the course of the last year, except that Conrail's cash performance was a little worse than we anticipated it would be.

To talk about why the Norfolk Southern price, I believe, is a fair one, and why Morgan Stanley, even at $1.4 billion is not a fair price, perhaps I can capsulize it briefly, this way.

Throughout the last two and a half decades, the railroads in the Northeast have progressively cannibalized themselves, abandoning service and shedding jobs because of some fundamental structural weakness.

Conrail has good East-West routes connecting New York and Chicago, Philadelphia and St. Louis, but it does not have good North-South routes.

The railroad industry is an industry where economics are long-haul. The North-South routes are very short. Conrail has not been able to generate enough economics to be price-competitive with trucks, and they have progressively lost their share of business from this region for structural reasons. Their share of business has declined about 3.6 percent a year for the last 20 years. Last year it went down nearly 5 percent, and there is no end in sight.

Now, to sell that railroad in a way that does not fix these structural problems is to condemn everyone who depends on Conrail to a continuation of that cannibalization, and it has really hurt.

CONRAIL NET INCOME

Over the course of the last year, Conrail essentially broke even. Now you have all heard the very impressive net income statistics that Conrail reports every year, every month, but net income is an interesting number. It is not the same as net profit, and that is very important to remember.

Net income does not take account of capital investment. In other words, it is the money the company takes in before it makes its investments.

Railroads have to make enormous capital investments to maintain service. To give you an example, in the month of January 1986, Conrail reported a net income of $9 million, which sounded good on its face, but the bottom line is, after Conrail made its necessary capital investments, their cash reserves dropped by $35 million in the month of January.

Mr. Lehman. Excuse me. Conrail keeps books about the same way as the Federal government.

Mr. Riley. I think that is about right, Mr. Chairman, and that is what concerns me. But to be very serious about it, I think this is the most important thought I can leave with you.

While Conrail has produced very impressive net income numbers over the last 16 months, that does not mean that the company has improved financially.

They have stayed essentially at a break-even level. They have been exempted from about $30 million in State taxes, and they have increased their cash position by about $20 million.

Now just to stay even, this is what Conrail has had to do over the last 16 months. They have laid off 3,200 employees; they have sold $90 million worth of Conrail property just to buttress their cash flows; they have posted over 500 miles of additional line for abandonment; they have claimed $11 million in direct labor protection subsidies from FRA and have requested another $12 million for the month of January.

These are very painful consequences for the communities on those 500 miles of line, and for those 3,200 employees. For the next year, Conrail estimates, again, just to stay even, that they will need to shed another 1,600 employees, and sell at least another $50 million worth of property. I do not know what their abandonment plans are, but Dick Hasselman, the vice president of operations, has recently talked about the need to shrink a stand-alone Conrail to an 8,000 or 9,000 mile system over the long-run, and that is a very catastrophic figure.

That means that to stand alone, if you do not fix the problem with those North-South routes, Conrail will have to abandon another 4,000 to 5,000 miles of service, and Mr. Chairman, we are unwilling to sell that railroad in a way that does not fix that structural problem; that leaves the Northeast to those consequences.

The sale to Norfolk Southern fixes the problem. It extends those short North-South routes into long single-line routes that are competitive, and can bring volume onto the line.

MORGAN STANLEY BID DEFICIENCIES

Morgan Stanley does exactly the opposite. Even at $1.4 billion it is not a qood deal. I will give you five reasons for it, and yield to your next question.

First, Morgan Stanley takes $240 million out of Conrail's cash reserves to pay for their deal. Yes, they have upped their price from $1.2 billion to $1.4 billion, and took $240 million out of Conrail's assets.

That, Mr. Chairman, is left pocket, right pocket, and, by doing so, they have lowered Conrail's cash reserves to just above the minimum the company has to have, at any point in time, to retain service. Secondly, in order to create a cash reserve big enough to pay its dividends, Morgan Stanley proposes to cut Conrail's capital investment by 21 percent in 1986.

To say that another way, Norfolk Southern would invest $130 million more in Conrail's track maintenance and equipment than Morgan Stanley will, and that is a significant difference for the future.

Third, Conrail cannot afford, when it is only breaking even on cash, to pay the $112 million in dividends that would be called for by the Morgan Stanley plan.

Fourth, the Morgan Stanley plan is contingent upon you, as Members of the House, granting Morgan Stanley's investors a special exemption from the insider trading provisions of the Securities & Exchange Act, and from the short swing profit limitations of the Securities & Exchange Act. No one else in the economy has that; why should they?

Moreover, you do not ask for an exemption from the short swing profit limitations unless you intend to generate some short swing profits.

Now we are looking for someone who is in this for the long-haul. Finally, the Norfolk Southern plan fixes Conrail's structural deficiencies. The Morgan Stanley plan does not.

And while the Morgan Stanley plan might put $200 million more dollars in our pocket on the day of closing, it leaves Conrail a quarter of a billion dollars poorer on that day, 20 percent less well off in capital investment and maintenance, with dividend levels that it cannot pay, and with no solution to the structural problems that would ultimately force the railroad to shrink 4,000 more miles of service.

That is inconsistent with the Secretary's responsibility in NERSA, to balance, seeking the best price with seeking the offer that best preserves service for the Northeast.

That really is a long and complex, but I hope, definitive answer to your question. Price has always been a factor to the Secretary, but it has been a secondary factor.

The key factor, in Elizabeth's view, has always been to favor the offer that would leave Conrail in the strongest financial position after the sale, and to leave it with the best capacity to serve the communities in its region.

No matter how it is priced, an offer that would force this railroad to shed four to five thousand employees, and that would permit it to shed four or five thousand miles of line, is not in the public interest, and in fact it is an invitation to our revisiting the railroad again at some point in the future, which I think none of us want to do. Thank you for giving me the time to give you that overly long answer, Mr. Chairman, but perhaps that will answer some later questions as well.

PRICE AS FIRST CONSIDERATION

Mr. **Lehman**. You answered everything but the question. I know that you would not sell it for $10 billion to Quaddafi, and I know that everything has a price that will overcome the other questions, such as service, and stability, and all those debatable things; and at some point I think that—whether it came from the Morgan Stanley people or from someone else—there is a point where price becomes Number 1 issue.

Can you reach out and touch that number—where, if you had a good fairy that came along and offered you, "X" billion for it, you would take it?

Mr. **Riley**. Well, I think in a sense——

Mr. **Lehman**. I mean you do not even have to answer that question but——

Mr. **Riley**. I understand what you are saying, Mr. Chairman, and I am trying to grapple with it from a slightly different direction, and I think the reason I may have some problem with it is that it is a hypothetical question.

No one else has come in and offered government a hard, guaranteed price that is higher than Norfolk Southern's, without taking the money to pay for the difference out of the company.

But on the other hand, we are not insensitive to price numbers, obviously. In the course of negotiations, we bid Norfolk Southern's offer up by about 20 percent; but I do not think that price would ever reach a point where a higher price was an acceptable tradeoff for the loss of service over 3,000 or 4,000 miles of line.

If there is no other solution, no other way to preserve Conrail's stability than to let that type of abandonment occur, then I think we would say you must bite the bullet.

But if there is a way to avoid that, by repairing the railroad's structural problems, I think the public benefit from preserving service to that many communities is so great, that it would be very, very difficult to overcome with price. I really believe that our fundamental responsibility in the Conrail sale is to sell the railroad in a way that will allow it to best service the region that it serves, five, ten and fifteen years from now, and I do not think that you could put a price on trading off that objective.

CONRAIL MANAGEMENT

Mr. **Lehman**. Conrail's come a long way since Cornelius Vanderbilt, when he said the public be damned.

Mr. **Riley**. I think it has; it is a very well-run railroad. It truly is a well-run railroad.

WESTERN RAILROAD MERGER

Mr. **Lehman**. If another large Western railroad were to now come forward and make an offer that is as good as, or better than Norfolk Southern's bid, would the Secretary re-think her position in support of Norfolk Southern?

That is another hypothetical question.

Mr. **Riley**. It is a hypothetical question and I have to say that the first telephone call I got yesterday was from the Union Pacific which had seen an article in "The New York Times" suggesting that they might be interested in Conrail.

They told me two things: First, no, we are not interested; second, they told me we are a little bit insulted by that because that article assumes that we would buy Conrail and then allow the other two Western railroads to buy CSX and Norfolk Southern. But the truth is, Mr. Chairman, that I tried very hard, early on, to see if there was any interest in the Western railroads in purchasing Conrail. I could not elicit any interest.

The Department also had a long-term concern about selling Conrail to a Western railroad, and this is what it is.

Conrail is obviously an improved railroad, but it is clearly the weakest of the three Eastern railroads. I do not think that anyone would argue that Conrail is as desirable as CSX or Norfolk Southern, as a merger partner.

If we got into a pattern of three big transcontinental mergers, Conrail would be the orphan; Conrail would be the one chosen third; Conrail would link up with the weakest of the three Western railroads, and that would, in effect, perpetually preserve the Northeast status as the area of the country that has the least desirable rail connections vis-a-vis the West, and I do not know that that is in the public interest. We would certainly, if a Western railroad came in and said "We'd like to talk to you," we are obviously not going to tell them "Don't come in," but we are very committed to the Norfolk Southern. We have already been down that road.

CLOSED BIDDING

Mr. **Lehman**. Mr. Riley, apparently, for all intents and purposes, the bidding is now closed. Either it is going to be sold to Norfolk Southern at $1.2 billion or thereabouts, or, apparently the government is going to continue operating it if the Congress does not approve the sale to Norfolk Southern.

That is what I more or less interpret the position of DOT and the FRA to be.

Mr. **Riley**. I think that is a fair assessment, Mr. Chairman. I also have to add, that the reality is that while people have talked about Conrail since the Secretary's selection of Norfolk Southern on February 8th, within our criteria, it has not been outbid; there are always rumors of people coming in to offer two and $2.5 billion, but I have not seen them.

But I think your assessment, particularly this late in the legislative session is a very realistic one. It is a very realistic one.

Mr. **Lehman**. It is either Norfolk Southern, or keep it in your back pocket?

Mr. **Riley**. I think that is correct.

Mr. **Lehman**. Mr. Coughlin.

Mr. **Coughlin**. Thank you, Mr. Chairman. We welcome you here. Obviously you have a very full platter.

Mr. **Riley**. I do.

Mr. **Coughlin**. Between rail and rail regulation and hollow axles and Union Station, and we admire the way you are handling it.

Mr. **Riley**. I thank you for saying that.

FAIR PRICE FOR CONRAIL

Mr. **Coughlin**. Obviously, I have a very strong interest in the Conrail sale, as you well know. How do you respond—and this follows on with what the Chairman was adding—to the charge that for $1.2 billion that the government is going to receive, the purchaser is getting about, I guess, $800 million in cash, and another $200 million in the retirement fund, so they are getting almost a billion dollars in cash, to say nothing of the railroad itself?

This is a charge that we have to respond to from our constituents, and others, who say well, this is not a fair thing for the taxpayers of the country.

Mr. **Riley**. Well, on the pension fund, as you know, the covenants in the Norfolk Southern purchase, and Morgan Stanley has agreed to accept these same covenants, preclude the buyer from liquidating the pension fund and taking out the over-funding.

As to the $800 million of cash in the company, Conrail has to have at any time about $500 million, give or take $20 million, in its accounts, to assure 90 days of continuous operation, and that is the rule of thumb that we use in gauging the financial standing from a cash flow basis of railroads around the country.

There is $300 million in extra cash in Conrail, there is no question about that, and we had to make a decision on whether to take that cash out, or whether to leave it in the company.

Early on we made a decision that, given the fact that Conrail, although it is generating $400 million in profits, is essentially in negative cash flow, that it would be in the best interests of the company to leave that $300 million in the company.

That also has very much been factored into the $1.2 billion price, because when you sell an asset like a railroad that cannot be liquidated—as Carl Icahn said the other day about TWA, "It's true; it's probably worth more dead than it is alive", if you simply sold off all the pieces of capital equipment, but a railroad cannot be liquidated and bidders are going to bid on the going concern value of the company.

If Conrail did not have that $300 million in cash in the company and the bidders were bidding only on the going concern value of a company with negative cash flow, I do not believe you could get a bid at the $1.2 billion level, and I do not think that anyone has come forward and made that offer.

Norfolk Southern is the only bidder which takes all of the dollars paid to the Federal government out of its own pocket and no one has outbid them and met that criteria.

Mr. COUGHLIN. But they are still buying, for $1.2 billion, $800 million in cash and $200 million in the pension fund.

Mr. RILEY. But the $200 million in pension fund cannot be taken out of the company and over time, the $200 million in the pension fund will wash out.

As to the $800 million in cash, $500 million not only has to stay in the company at any time for economic reasons, it is bound in there by the covenants.

Don't forget the other side of the equation, though. In acquiring Conrail, Norfolk Southern is acquiring one billion dollars in external debt on equipment.

It is also acquiring contingent claims on asbestosis that cannot be valued.

They are also acquiring the unfortunate receiving end of the orphan bridges question.

So there are very large liabilities out there as well. But more than anything else, Norfolk Southern is acquiring a company that even in the best of years, and in the best of times, is at best breaking even in cash flow, even when selling a lot of property every year.

So I think it is very difficult to argue that this is a bonanza. It is a good deal for them. They would not make it if it was not a good deal.

The combination of those two companies creates a whole that is greater than the sum of the parts.

Now Conrail might be worth more to a purchaser who would come in and buy it, take out the cash and do a quick turnaround.

That is very possible. But we are not interested in that kind of a buyer, and if you exclude that, Norfolk Southern has not been outbid, and the market is the best test of value, I think.

DECLINING CONRAIL FREIGHT TRAFFIC

Mr. COUGHLIN. You mentioned the declining traffic projections for Conrail. Could you walk through those again for a minute?

Mr. RILEY. Yes. If I am lucky, I may have a chart; if I am not, I will have to do it verbally. I do have a chart.

Over the last 20 years, Conrail's freight volume has declined an average of 3.6 percent a year, and there is no end to that in sight. Now this is a very interesting chart because I actually made this chart for this committee a year ago, and when we made the chart, I used Conrail's own budget estimate, which said that the decline would end this year and that the traffic would level, and that is that line there.

What actually happened was, Conrail was dead wrong. The decline continued at a rate far in excess of the historic rate, and that is what forced the company to take such a heavy toll on employees, service, and equipment in the last year, to continue to break even despite the decline in volume.

And my point is simply this: jobs and service follow volume. I do not think that anyone has contested that a Norfolk Southern/Conrail merger will bring at least $100 million in additional volume onto Conrail. It addresses precisely this problem in a way that no other purchase can.

FUTURE CONRAIL TRAFFIC PROJECTIONS

Mr. COUGHLIN. Why do you say there is no end in sight to the——

Mr. RILEY. Because I have not seen any projection other than Conrail's, which suggests that the decline in the traffic base has halted or will reverse.

Now Conrail has made that projection, but as I think this chart illustrates, the projection has proven to be wrong, and Conrail is now estimating that the decline will continue next year.

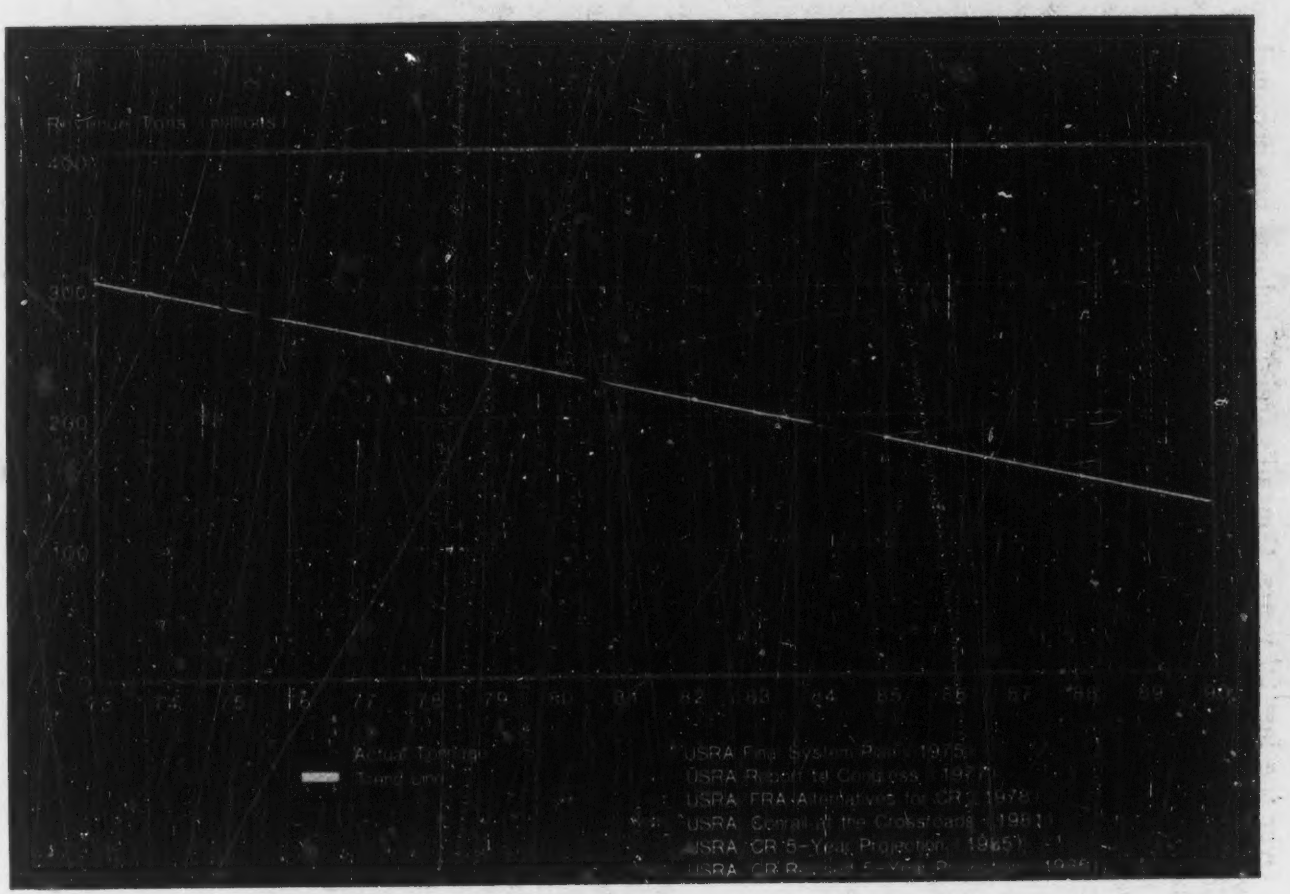
Mr. COUGHLIN. Thank you, Mr. Chairman.

Mr. LEHMAN. Without objection, the chart will go in the record.

Mr. RILEY. I would like to add one more into the record.

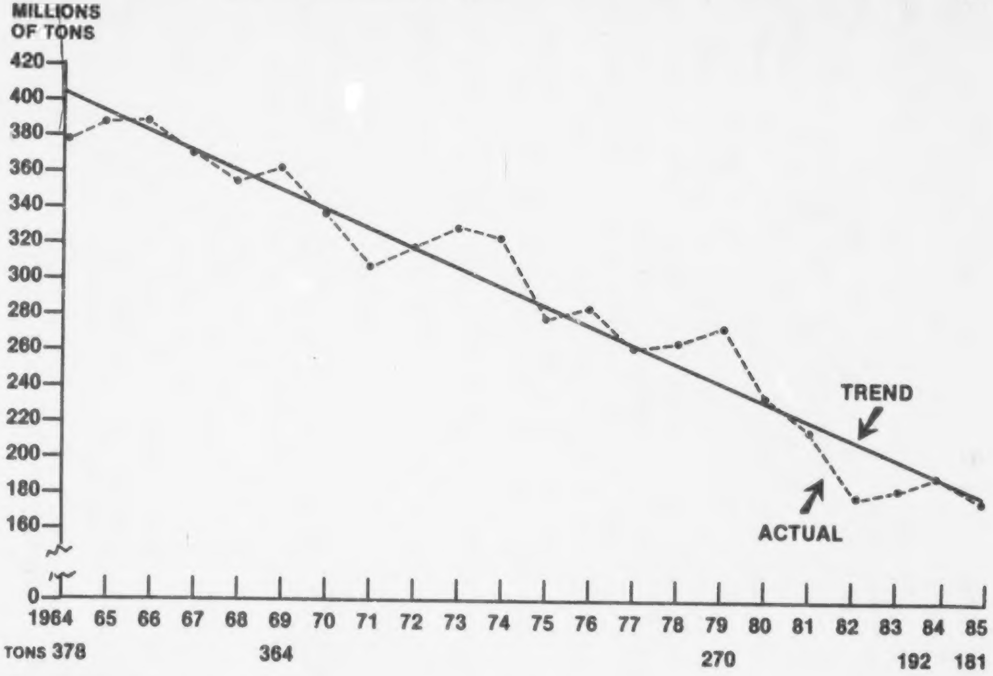
Mr. LEHMAN. Without objection.

[The charts follow:]


Revenue Tons (millions)
400
300
200
100
0
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
Actual Tonnage
Trend Line
USRA Final System Plan (1975)
USRA Report to Congress (1977)
USRA FRA Alternatives for CR (1978)
USRA Conrail at the Crossroads (1981)
USRA CR 5-Year Projection (1985)
USRA CR Revised 5-Year Projection (1986)

ANNUAL FREIGHT TONNAGE

Conrail's 1985 actual tonnage was 181 million tons, 5.7 percent below the 192 million tons it carried in 1984. Tons carried in 1985 are also 5.2 percent below the 191 million tons Conrail projected in its 1985 Budget. Between 1964 and 1984, Conrail's traffic has declined, on average, 3.6 percent per year.



Source: Conrail

OPTIMISTIC TRAFFIC PROJECTIONS

Mr. **Riley**. Over the course of the years, FRA, frankly, and some of my former employers on the other side of the Hill, have made decisions based on projections and estimates which proved to be the "best case" scenario.

On this chart, the white line represents Conrail's actual traffic performance. All of the other lines represent the projections that were made by Conrail and USRA on what that performance would be, and we call this a hockey stick chart because the other lines look a lot like hockey sticks going off to the north.

The point is that every projection that has been issued on Conrail, by USRA, or Conrail, has proven to be wrong, on the high side by a very substantial margin, and this is what concerns us.

It is our view that you have to predicate this sale not on the "best case" scenario, but you have to predicate it on the mid-case or "worst case" scenario, to be sure that the company will not have to come back to government at some point.

CONRAIL EARNINGS/CASH FLOW PROJECTIONS

Mr. **Coughlin**. But Conrail's projections of earnings have been on target, have they not?

Mr. **Riley**. Conrail's projections of earnings have been close to target; their projections of cash flow have been well off target. Conrail was over 100 percent, on the high side, in its cash flow projections for this year. Let me get that exact number for you and I will give it to you this afternoon. I have it in this file. I just need to look for it.

Conrail's projections on earnings and on tonnage have been off by tremendous margins, on cash flow and on tonnage. They have kept their net income projections basically accurate by simply laying off more employees and abandoning more lines whenever traffic falls, and that is the cycle we are trying to avoid.

[The information follows:]

Cash flow projections vs. actual results, 1985

	(Millions)
1985 budget—December 1984	$174
1985 projection—June 1985 (Five Year Plan 1985–1989)	149
1985 actual results	64

ALLEN AND COMPANY CONRAIL BID

Mr. **Coughlin**. There is now another offer on the table by Allen & Company, I believe.

Mr. **Riley**. Yes.

Mr. **Coughlin**. Could you comment on that offer and provide a detailed analysis of that offer for the record?

Mr. **Riley**. I will be glad to do that.

[The information follows:]

The information we have received on the Allen & Company proposal is couched in such general terms that it is impossible to evaluate it definitively or to compare it with the Norfolk Southern Corporation plan which the Senate has approved.

Although the Department of Transportation's investment advisor, Goldman Sachs & Company, on February 26, 1986, requested Allen & Company to provide critical information to complete an assessment, a number of deficiencies are apparent from the documents that have been submitted initially.

1. The proposal continues to be significantly inferior in its impact on Conrail's financial strength as compared to the NS proposal. Only $1.55 billion is proposed to be paid by Allen. The balance would come out of Conrail's funds.

   - The Allen & Company proposal apparently continues to use approximately $230 million of Conrail's cash as part of its labor settlements.

   - Allen & Company proposes to bind Conrail to public interest covenants that they claim are "substantially equivalent" to those agreed to by NS, but they are not equivalent and do not give the government the assurance obtained from the NS covenants. For example, the Allen & Company has refused to accept the covenant against asset stripping that Secretary Dole incorporated in the NS agreement, and the Allen offer would permit Conrail to borrow to pay dividends -- a practice that proved disastrous to Conrail's predecessor, the Penn Central.

   - The Allen & Company deal also requires that Conrail obtain a $300 million line of credit, but there is no indication of how this extraordinary borrowing against Conrail's assets can be reconciled with preserving Conrail's financial strength. In fact, our analysis indicates a part of the $300 million line of credit will be necessary just to maintain the required minimum cash balance of $500 million as called for (the MOI with NS).

	Cash Balance	$900	million
Less:	Payment to Government	(250)	million
	Payment to Employees	(230)	million
	Balance Remaining	$420	million

2. The Allen & Company proposal essentially is a speculative proposition, with the Government bearing 100 percent of the risk until the funds are raised and the transaction is completed. Allen & Company's statement that the Government will receive $1.8 billion is nothing more than a predatory and highly conditional statement of intent that if Conrail Acquisition Corporation can raise the necessary funds through selling its stock to the public, and if the Congress then approves the sale, then the Government's stock can be purchased.

Since Allen & Company does not have the financial resources to consummate a $1.8 billion purchase from the Government, the ultimate outcome is subject to the whim of the capital markets. This market risk is particularly dramatic in that a public offering of this size is unprecedented; it would constitute the largest industrial initial public offering in U.S. history.

Attached is a copy of the letter Goldman, Sachs and Co. wrote Allen & Co. requesting additional information.

Goldman, Sachs & Co. | 85 Broad Street | New York, New York 10004
Tel: 212-902-6224

Paul B. Kazarian
Vice President
Investment Banking Division

February 26, 1986

Mr. Daniel E. Heffernan
Vice President
Allen & Co.
711 Fifth Avenue
New York, NY 10022

Re: Conrail Acquisition Corp.

Dear Dan:

As you are aware, as financial advisor to the DOT, we review and evaluate each offer submitted to Secretary Dole. We have reviewed your June 1984 and December 1985 proposals and are reviewing your February 7, 1986 revision.

In order to complete our analysis, we will need to receive and review certain information which would define in detail the terms and conditions of your offer. The information which we are requesting is substantially similar to information requested from and provided by other parties proposing to acquire Conrail.

Of primary importance, it is essential that you explain the nature of your commitment to purchase Conrail at the specified price. Why should your proposal be considered anything other than: (1) a best-efforts offer by intermediaries assuming no risk, and (2) an offer under which the U.S. Government assumes all the risk associated with the completion of the proposed single common stock offering? Furthermore, what assurance does the U.S. Government have that the specified offer can be completed (e.g., that your valuation assessment is achievable) or that a decline in the stock market will not significantly alter your estimated proceeds to the U.S. Government?

Attached in Annex 1 is an outline of specific questions concerning various aspects of your proposal. We would appreciate receiving written responses to these questions as soon as possible. Please contact us after receiving this letter with your anticipated timing of a response.

We look forward to receiving your responses.

Sincerely,

Paul B. Kazarian

Attachment

cc: Calvin J. Collier

ANNEX 1

REQUESTS RELATING TO REVISED OFFER OF ALLEN & CO. TO ACQUIRE CONSOLIDATED RAIL CORPORATION

A. Memorandum of Intent or Form of Agreement

1. CAC's revised offer indicates a willingness to accept public interest covenants in "substantially the form" of the covenants contained in the Memorandum of Intent between the Secretary and Norfolk Southern. In order to permit Goldman, Sachs and its counsel to satisfy themselves that the covenants which CAC is proposing are fully consistent with the Secretary's criteria, we request that CAC provide us with a draft of a memorandum of intent or definitive agreement setting forth the proposed covenants and other terms of sale in full text. Please follow the outline of the Norfolk Southern Memorandum of Intent.

2. Please provide a schedule of all events that must be completed before commencement of an offering.

3. How can the Government be sure of obtaining $1.8 billion at the Closing? Are Allen & Co. and First Boston guaranteeing the Government a purchase price? Is there a price at which Allen & Co. and First Boston would guarantee the proceeds to the Government? What would be the minimal acceptable aggregate offering price (under which the proposal would remain valid) for the Government's 85% interest and the ESOP's 15% interest in a public offering of common stock? If more than the aggregate purchase price is obtained from the offering, who will receive the incremental proceeds? If the lead-managers make a profit on unsold shares based on a rise in the stock price after the offering, will each firm retain the proceeds?

4. CAC's original December 17, 1985 offer contained a three-year ownership limitation. The revised proposal is silent on this issue. Has the proposed ownership covenant been dropped, or would it be included in the revised proposal? What assurances does the U.S. Government have that Conrail will not be acquired after the public offering?

5. The CAC proposal would make CAC's obligation to purchase Conrail conditional upon obtaining the necessary funds through the public offering "or otherwise." What alternatives does CAC contemplate using in order to raise the purchase price in the event that the public offering does not raise the full cash purchase price? How will debt financing be utilized? Would any of these alternatives involve mort-

gaging any Conrail assets? Explain the impact of the various alternatives on your proposal, especially the public interest covenants.

6. Will the offering price vary based on whether CAC will own 85% or 100% of Conrail's common stock? Is any financing anticipated by CAC prior to the public offering?

7. Would multiple offerings be permitted as a method of raising the purchase price under the CAC proposal? If so, how would this work? How would proceeds flow to the Government under such a scenario? What would be the additional sources of such funding?

8. Is the determination of Conrail's cash at closing (and thus the Government's contingent payment) to be made before or after giving effect to the proposed $230 million in payments to employees? Please review in detail the expected cash payment to the U.S. Government and associated mathematical calculations.

9. Is it contemplated that the proposed Conrail credit line of $300 million (the availability of which would be a condition to CAC's obligation) would be used to increase Conrail's closing cash in order to fund the $230 million payment to labor and the contingent payment to the Government? Summarize the major aspects of a "reasonably satisfactory" credit agreement. Do you have any current intention to use the credit line and, if so, please explain? Why is the credit line a condition to your offer?

10. Is there any time limit on your offer?

11. Does the consideration you have offered to pay vary according to stock market performance or any segment thereof? If the market and rail stocks decline to levels that existed in August 1985, how would the offering price and composition of funding change?

B. Legislation

1. Please provide the statutory language which CAC would propose to introduce in order to implement this transaction. The draft bill should address such matters as legislation necessary "to permit and effectuate the transactions with Conrail's ESOP" and "to avoid any tax implications for Conrail or its subsidiaries (other than as contemplated herein)."

C. Pro-Forma Financial Information

1. NERSA's primary mandate to the Secretary is that in arranging for the sale of Conrail, continued rail service be ensured through a financially-sound post-closing entity. In order to permit us to advise the Secretary with respect to the effect of the proposed transaction upon Conrail, we request that you provide us with five-year pro forma financial information (together with accompanying notes, analyses and discussions) relating to the proposed transaction. Such information should include (i) items addressing compliance with the public interest covenants, (ii) basic information summarizing balance sheet, income statement and cash flow statement items and (iii) projected dividend payment targets. All financial information should be completely footnoted to explain assumptions.

2. Discuss the proposed dividend policy. What will be the initial dividend policy? What is the target dividend yield on Conrail post offering common stock, and how was this policy determined? How important is the projected dividend yield in your valuation assessment?

3. How extensive has your analysis of Conrail been to date? Please provide a list of the material Allen & Co. and First Boston have reviewed regarding Conrail's financial and business condition and prospects. What additional review will be required?

D. Registration Statement and Public Offering

1. The registration statement on Form S-1 which CAC filed on January 8, 1986 indicated that CAC would commence its public offering before any agreement was reached with the Secretary concerning the sale of Conrail and that if CAC was thereafter unable to acquire Conrail, the proceeds of the offering (less expenses and certain non-refundable fees payable to Allen & Co. and First Boston) would then be refunded to investors. Subsequently, First Boston issued a press release stating that no CAC public offering would be made unless and until an agreement was reached with the Secretary. Please state Allen & Co.'s and First Boston's position with respect to whether a CAC public offering will be made before an agreement is reached with the Secretary.

2. What is the actual price at which you intend to sell CAC's Common Stock (which represents the U.S. Government's 85% interest) to the public? How much of a discount is this from expected fully distributed value?

3. Please discuss and explain what market research specific to this public offering Allen & Co. and First Boston have conducted prior to filing the CAC Registration Statement and up to the date of your response to these questions. Please identify the potential investors which have been contacted and list (and provide us with copies of) any materials which have been provided to these potential investors.

4. Have any other features of the December 17 proposal or of the S-1 been changed except as set forth in the revised January 7 proposal? If so, please explain.

5. Has CAC filed the amendment to its registration statement referred to in the February 7 revised proposal? Please provide a copy of that amendment if it has been filed, or if it is filed hereafter, please provide a copy when it is filed. If not yet filed, when do you anticipate filing?

6. Have you made any contacts with potential underwriters? What communications have transpired?

7. Please identify the proposed members of the underwriting syndicate for the CAC public offering and provide copies of the commitment letters or wires signed by those entities and financial statements of the proposed underwriters.

8. Please provide us with a copy of the proposed Underwriting Agreement for the public offering. If this document is not yet available, when do you anticipate that it will be available?

9. Which firm is to be the lead-manager for the CAC public offering?

10. Please provide a list of the aggregate fees expected to be earned by Allen & Co. and First Boston from this transaction. What services will be provided for non-selling related fees? What is the expected gross spread? What are the management fee, underwriting fee, and selling concession components? What precedent has been used to estimate fees? How much stock would Allen & Co. and First Boston each expect to sell (please provide extimates for each firm)?

11. Will there be an over-allotment option with respect to the public offering? If such an option is included, what relationship will it have to the size of the offering? What has been Allen & Co.'s and First Boston's

general policy regarding the over-allotment option on initial public offerings?

E. Other Matters

1. Please supply copies of all agreements and contracts between CAC and Allen & Co. or First Boston.

2. The CAC offer indicates that CAC will purchase all or any part of the ESOP's interest in Conrail's Common Stock that the ESOP trustee elects to sell to CAC at the same per share price offered to the Government. If the Government receives an amount in excess of $1.55 billion, would the maximum price paid for the ESOP's 15% interest be increased from $274 million, or does $274 million represent your maximum price?

3. Describe how CAC's offer to purchase the ESOP's interest would interplay with its public stock offering. Would the ESOP trustee grant CAC an irrevocable option, execute a definitive agreement, etc. in advance of the public offering?

4. CAC's offer indicates that if the ESOP trustee does not agree to sell all of its shares to CAC, Conrail will take the necessary action so that the ESOP will own directly the remainder of the Conrail Common Stock which it now owns beneficially through a subsidiary of Conrail, and the ESOP will be modified "to continue the ESOP without any commitment to make future contributions." Does CAC contemplate that the remaining shares of CEC Preferred Stock now owned by Conrail would be cancelled or contributed to the ESOP? In other words, is it the intent that the ESOP would acquire the full 15% interest in Conrail?

5. Describe how CAC would allocate the $200 million to Conrail's agreement employees and $30 million to Conrail's nonagreement employees?

6. Has CAC conducted negotiations with labor representatives concerning this proposal? If the answer is yes, what was the outcome of those discussions?

7. Please describe the specific job-protection provisions that would be afforded to Conrail's employees under your proposal.

8. Would Conrail's deficit in its earnings and profits account be affected under the Allen & Co. proposal?

9. What would be the size of Conrail's Board of Directors under the revised CAC proposal? Please identify the prospective Board members who have already indicated a willingness to serve.

10. In addition to increases in the stock market, please summarize the factors that affected your decision to increase the offer. What new information have you obtained or developed to cause you to increase the offer?

Mr. **Riley**. I will just make two brief comments on it. The price on the Allen offer is not guaranteed. Allen will do a public offering for us and give us the proceeds.

They originally estimated that it would be about $1.4 billion; they now estimate that it will be $1.8 billion. But government bears 100 percent of the risk in the Allen offer, and in fact the Allen offer really does not do anything for us that we could not do ourselves.

The Allen offer, also, while they say that they would accept covenants that were generally the same as the Secretary's, they have given us no language; we really do not know what they would be willing to accept.

In addition to that, the offer—well, I can expound on that for the record. I think it is sufficient, for the purpose of our conversation this morning, to point out that the price is not guaranteed; the price is an estimate, and government bears 100 percent of the risk. They do take $250 million out of Conrail.

They put a $300 million line of credit leveraged off Conrail's assets. The Morgan Stanley price is a guaranteed price; the Allen & Company price is not.

Mr. **Coughlin**. If you will elaborate on that for the record. I think it important that we have a detailed analysis of that.

Mr. **Riley**. I will also provide you with a copy of a book, that you need not publish in the record, called "Indecent Exposure."

The book, "Indecent Exposure" is a novel that was written about Allen's takeover of Columbia Pictures. You will enjoy it; I did.

TIMING OF CONRAIL SALE

Mr. **Coughlin**. There is also a school of thought that goes, "Why the rush to sell Conrail?" since it is being profitable at this point in the game, and would you comment on that?

Mr. **Riley**. I will make two comments on it. As long as Conrail remains a free-standing entity owned by the Federal government, it has no way to compensate for the loss of traffic volume illustrated by those charts, other than to shed lines and shed employees.

We want to reverse that cycle. By selling Conrail, we can end that cycle. The longer we wait to do it, the more employees that are going to lose jobs that would not have lost them.

The more communities will lose service that would not have lost them. From a fiscal standpoint, we lose about $35,000 a day in income from the $1.2 billion that would be—it is actually close to $1.3 billion, because as you know, there is an escalator in the Norfolk Southern sale. The price is up now close to $1.3 billion. But based on the $1.2 billion number, we lose about $35,000 a day in income, which we desperately need, I think, to try to meet the Gramm-Rudman targets.

The rush to sell. I have been Federal Railroad Administrator for 27 months, which is on the long side of the average tenure of Federal Railroad Administrators, and I can tell you why, too, now that I have been here.

But the Conrail sale process was in process for about three years before I came. It has now been a six-year process. Conrail is now to the point where it is a salable commodity.

Government should not stay in the railroad business when it has a salable commodity, and it surely should not stay in the railroad business, when we are preventing Conrail from making structural repairs that could make a difference in its capacity to serve communities.

FUTURE CONRAIL ABANDONMENTS

Mr. COUGHLIN. Now you stated that if Conrail were a stand-alone entity, it would have to continue to shed substantial numbers of lines, and substantial numbers of jobs.

Mr. RILEY. Yes.

Mr. COUGHLIN. If these lines and jobs are indeed unprofitable, unnecessary, why would Norfolk Southern want to keep them?

Mr. RILEY. The reason is this: It gets back to the argument I made at the beginning about structural deficiencies.

Two points. I do not think that anyone has challenged the fact that a Norfolk Southern/Conrail combination will bring at least $100 million in traffic volume onto Conrail. That is the most conservative estimate I have seen and it largely comes from——

Mr. COUGHLIN. Not on those lines?

Mr. RILEY. Oh, yes, on those lines, because it largely comes from trucks going up and down the Northeast Corridor. Where Conrail gets the main benefit of the merger is on its North-South lines. Its East-West lines are good today.

Its North-South lines, however, are so short, that they cannot price their product competitively with trucks, and you can see the impact of that right out of Potomac Yard where they have to make the interchange.

And I am not saying that you are never going to have an abandonment under Norfolk Southern. Of course as demographics change you are going to have changes.

It is a matter of comparative advantage. When more volume is brought onto the North-South lines, you will preserve more of those lines and preserve more of the jobs on those lines. That is what we are seeking to do.

Mr. COUGHLIN. What assurances do you have for the management of this?

Mr. RILEY. The assurances that you have for management lie in the structure of the two companies. Norfolk Southern is one of the most profitable and one of the best run railroads in the country today.

They clearly have a management committed to railroad operations. They are not a large holding company with fifteen different enterprises. They are a railroad company.

And I think Bob Claytor has said, and said persuasively, that once you "scramble the eggs" of the two systems, and build the interchanges, and set up the joint marketing operations, you cannot unscramble them.

There are no absolute guarantees in the commercial world, but the guarantee of good management and economic service that you get from Norfolk Southern is stronger than the guarantee we could get from any other option. Surely, stronger than the guarantee we get from a Morgan Stanley which wants to sell the company out again in six months.

ABANDONMENT COVENANT

Mr. COUGHLIN. Would Norfolk Southern be willing to put that into the covenants, that they would maintain the service?

Mr. RILEY. I think that the covenants in the Norfolk Southern agreement, to continue to maintain service substantially as Conrail runs it today—and I am not going to try to recite them all, but I think it is a about a dozen pages of covenants—go about as far in that direction as a draftsman can go.

But you know, over the long-run, what is going to make the difference, on the maintenance of service is economics, is traffic volume.

Where traffic volume exists, jobs are going to exist and service will exist. Where it is not there, you are going to see abandonments.

Norfolk Southern brings more traffic volume to Conrail than any other option, and so on that scale of comparative advantage, we have always felt that it was the best option that gave the best achievable guarantee, and again, you do not need to look any farther than the fact that Morgan Stanley would cut Conrail's maintenance and capital investment by 21 percent, to see the difference.

NS CAPITAL INVESTMENT PLANS

Mr. COUGHLIN. As I understand it, Morgan Stanley makes the same covenants that Norfolk Southern would?

Mr. RILEY. Yes. They make the same covenants that Norfolk Southern does but their pro formas are substantially different. In the contracts, there are certain minimum guarantees, minimum amounts that have to be invested, and they are the same in both contracts. They are around $350 million. But there are also pro formas on how the companies intend to operate.

Norfolk Southern's pro forma projects capital investment levels in Conrail that are 21 percent higher than Morgan Stanley's. Moreover, because the Norfolk Southern plan would bring a significant amount of additional traffic volume to Conrail, it will generate the income to make those capital investments which Morgan Stanley will not.

Finally, Norfolk Southern has a proven track record in this regard. They have been Number 1 in the railroad industry in capital investment, traditionally. In fact Conrail has been Number 2. Stanley Crane carried that tradition from Norfolk Southern to Conrail, when he went to Conrail.

Incidentally, there is a good point that slipped my mind. Norfolk Southern has agreed to apply to Conrail the same maintenance standards that it applies to the existing NS system, which are the highest in the industry.

Mr. COUGHLIN. We have lots of other questions on Conrail so that I will yield to my colleague from Michigan.

CONRAIL LEGISLATION TIMETABLE

Mr. **Pursell**. Thank you, Mr. Chairman.

John, nice to have you back before the Committee. I agree with Larry and I compliment you on that excellent safety report.

I think that is really well deserved and a credit to your staff and your organization.

Regarding Conrail, what is the timetable now that it is here in the House and where is the point of no return?

Mr. **Riley**. Well, I understand that some hearings will be scheduled in the relatively near future on the House side. I am really in a poor position to speak on the Committee scheduling, because I do not know what it is. I would certainly hope that the matter could be concluded this year.

The Conrail sale does represent about 10 percent of the Gramm-Rudman-Hollings savings, its financial equivalent. What is the point at which Norfolk Southern would say, I have had enough government, I want to go home?

I honestly do not know that. I do not know that they know that at this point. Their offer has been extended and they have a date to which it has been extended, but I do not frankly recall exactly what it was. But I think that as long as Norfolk Southern believes that it is being treated fairly and that Congress is moving with a dispatch that balances their commercial needs with Congress' legitimate right to study this issue, I think they will stay with it.

ANN ARBOR RAILROAD

Mr. **Pursell**. One of the railroads in my Congressional District is the Ann Arbor Railroad, which is having difficulty with some negotiations. We were hopeful that we could negotiate with Conrail to look at trackage rights from Ann Arbor to Detroit. The Ann Arbor Railroad has successfully turned around and has a chance for some great competition in our part of southeastern Michigan.

I wonder if you could comment on that particular project. Could you be helpful in encouraging, let us say, more and better negotiations to try and accomplish an objective that is a major concern of mine and many others in Michigan?

Mr. **Riley**. Mr. Chairman, I would be very glad to talk with the parties and I do not pretend to be privy to all the details of their conversations.

I am rather fond of that little railroad. We put about $2.4 million into it last year and I did that because I thought that it had a chance to do well over the long term.

One thing that the Ann Arbor picks up through the latest divestiture agreement is a new connection at Milon, which is going to expand their marketing area. I think that is a positive step and I would certainly be very happy to talk with them about where they are.

I know Clark Grant fairly well and I would be happy to talk with them to see where they are and to get a good assessment of what their needs are.

Mr. **Pursell**. What authority or position are you in to help any negotiations that might be possible in the event that it was sold to Norfolk Southern?

Mr. Riley. I do not know that I have any authority per se. I can just let my good offices be available. At times it is successful and——

Mr. Pursell. That is what I am getting at. You do not have any problem with trying to be a catalyst to facilitate more competition in the region.

Mr. Riley. We have always talked with the parties. At times we have been successful and I have been remarkably unsuccessful with the rail strike in New England right now. But we are always willing to try.

GRADE CROSSING FATALITIES

Mr. Pursell. Well, I appreciate your support and your help.

Another area—grade crossings—how are we doing with the safety and grade crossings? I am not too clear on that.

Mr. Riley. This year, the numbers are better but they are still not acceptable in my judgment. Our grade crossing fatalities dropped about 12.2 percent this year. And in a sense it is our biggest success story and at the same time, our biggest frustration. They are down over 48 percent from 1978, the last pre-Staggers year, and yet, there are still, on the average, about three grade crossing accidents a day in this country.

We held two days of public hearings on the issue this year and then went out and helped to sponsor a national conference on the grade crossing problem.

And we produced about a 20-page, trying not to make it verbose, report on different things that could be done by the stakeholders in it, and I would like to provide you with a copy of that.

[Clerk's note.—The Executive Summary of that report follows. The entire report was submitted for Committee files.]

U.S. Department
of Transportation
Federal Railroad
Administration

Rail-Highway Crossing Safety Report

DOT
SAFETY
INITIATIVES
R
R
FRA
RAIL
ROAD
CROSSINGS

Office of Safety

July 1985

EXECUTIVE SUMMARY

MAGNITUDE OF THE PROBLEM

Over the years, the Federal Railroad Administration (FRA) has worked closely with the Federal Highway Administration (FHWA), the States, the railroad industry, rail labor, suppliers, the National Safety Council (NSC), and other parties to reduce the number of accidents and fatalities at rail-highway crossings. These efforts have produced dramatic results. Between 1978 and 1983, crossing accidents, fatalities, and injuries declined each year, with the cumulative decline for each category reaching nearly 50 percent.

Because of our commitment to continuing that improvement, and because 52 percent of the fatalities attributable to railroad operations had occurred at rail-highway crossings, in 1984 FRA initiated a series of inquiries into crossing safety. The purpose of the inquiries was twofold: to create a national forum for seeking out the best ideas on how the human resources of each agency and institution concerned with rail-highway crossing safety could be most effectively utilized and to examine issues relating to the reliability of crossing warning devices.

This report summarizes the conclusions drawn from the national forum, reviews the statistics on rail-highway safety, and chronicles both past and present efforts to improve safety at rail-highway crossings. It also includes FRA's recommendations on future actions to reduce the number of rail-highway crossing accidents and fatalities.

In 1983, there were 7,161 accidents at rail-highway crossings which led to 575 fatalities and 2,623 injuries. This represents the lowest absolute number of accidents and casualties since the Federal Government began compiling these statistics in 1920. These numbers represent about a 50-percent improvement from 1978.

Raw data for 1984 reflects an increase over 1983 in accidents, fatalities, and injuries when compared to the previous year. However, in 1984 the railroad industry also experienced a significant increase in train miles. When normalized to an accident rate per million train-miles, the number of accidents is down more than 4 percent (12.29 accidents per million train-miles).

There are over 370,000 public, private, grade-separated (bridges), and pedestrian crossings in the United States. Public at-grade crossings number approximately 200,000; 56,000 (28 percent) have a device to warn motorists, such as flashing lights and gates, that is activated by an approaching train. The remainder of the public crossings have signs to warn the public.

CURRENT EFFORTS TO ENHANCE RAIL-HIGHWAY SAFETY

Several education and engineering programs were initiated over the last 12 years to improve rail-highway crossing safety. The following is a description of these efforts, with comments provided by participants to the FRA hearings:

203 Funding: Under Section 203 of the 1973 Highway Safety Act, Congress dedicated a portion of the Highway Trust Fund for rail-highway crossing safety improvements. This program was subsequently renewed for each succeeding year. The FHWA administers the Section 203 Program. Through 1986, when the current categorical program expires, about $2 billion will have been allocated to the States for crossing safety improvements. Approximately 20,000 public crossings have been equipped with train-activated warning devices. Other improvements include: new, smoother crossing surfaces, signs, realignments, clearances of visual obstructions, pavement markings, improvements in train-detection circuitry, illumination, elimination of little-used crossings, and standardization of signs, markings, and signals.

At the FRA safety inquiry hearings, most participants explicitly acknowledged the important contribution made by Federal highway funding in reducing hazards at crossings through installation of warning devices and other means. The railroad industry also urged expansion of eligibility to include upgrading of existing active-warning devices.

The Department of Transportation (DOT) has supported legislation which would continue to make rail-highway crossing safety improvements eligible for FHWA funding. While witnesses differed on whether a categorical or block grant would provide the most effective delivery system, all witnesses agreed that eligibility for Federal highway funding should be retained.

Operation Lifesaver: Operation Lifesaver is a public information and education program operated by the NSC to reduce accidents, fatalities, and injuries at rail-highway crossings. Through a program of educating motorists to the dangers at crossings, of encouraging enforcement of safety laws, and of improving crossing engineering, Operation Lifesaver has made a major contribution to the decrease in accidents. Forty-seven States have participated in the program.

The effectiveness of the program as a public education medium has been clearly demonstrated. All States with Operation Lifesaver programs have reported to the National Safety Council significant fatality reductions at crossings within one year after establishing the program. The fatality rate in Idaho dropped a resounding 39 percent at the end of the first year and Nebraska demonstrated even more impressive results after a one-year period--a 46 percent reduction in rail-highway crossing fatalities.

FRA has at least one Operation Lifesaver Coordinator in each of its eight regions. These offices encourage State and local participation in Operation Lifesaver and promote safety efforts. In 1984, FRA employees made over 1,000 contacts on behalf of Operation Lifesaver programs and directly reached nearly 100,000 people.

Participants at the FRA hearings praised the dedication of the people involved in Operation Lifesaver and the success of the program. The NSC and other participants advocated expansion of the program. Funding was recommended to educate drivers, especially schoolbus drivers, and future drivers. Witnesses urged additional efforts to enlist the assistance of law enforcement officials in more rigorously enforcing the law against those who fail to heed active warnings at crossings.

Crossing Inventory/Accident Reports: Since 1976, FRA has processed and analyzed crossing demographic and accident data provided by States and railroads. The National Rail-Highway Crossing Inventory contains site-survey data on all U.S. rail-highway crossings. FRA updates the file from information provided by States and railroads. In addition, railroads are required to report to FRA all crossing accidents. This information is essential to assess safety trends and to perform risk analyses to assist in prioritization of 203 funding.

At the FRA hearings, the American Trucking Association recommended that information on the type and size of trucks involved in crossing accidents/incidents be noted in an accident report.

Corridor System Approach: Recent efforts in Illinois, Florida, Minnesota, and South Dakota on a corridor approach to evaluate and improve crossing safety have proved effective. In the systems approach, all rail-highway crossings in a community or on a corridor are evaluated by a diagnostic team which considers the traffic flow patterns in the community, access to emergency services, bus routes, train traffic characteristics, train speeds, and other factors. Decisions are made from among alternative improvements for each crossing. The usual solution, if traffic flow and priorities dictate, is to decide on automated train-activated warning devices or nothing at all. When a corridor or systems approach is employed low-cost improvements, such as brush clearing, new signing, street lights, or pavement markings, are more often considered and applied. The corridor approach has demonstrated that implementation of lower cost strategies at all crossings along a rail line can significantly alleviate conflicts. All participants at the FRA hearings endorsed the continuation and expansion of the corridor approach.

Research: FHWA and FRA jointly sponsored a research program that has developed and made available to States and railroads a Resource Allocation Procedure and Accident Prediction Formulas. These computerized management tools can assist program managers in planning their crossing safety improvements. Some States and railroads have utilized the published User's Guide and have established their own internal procedures. Others continue to request resource allocation and accident prediction listings from the FRA. More recent research has produced Severity Prediction Formulas for rail-highway crossing accidents. Once completed, this work has the potential to provide an additional tool to help managers select projects and manage their programs.

The State of Texas has a program that encourages individuals to notify its State Department of Public Safety, via a toll-free telephone number, of malfunctioning train-activated signals. The information is then passed to the appropriate railroad. No assessment has been made yet on the accuracy of the information received from the calls or on the corrective action taken.

BUILDING ON PAST PROGRESS--RECOMMENDATIONS

FRA believes that crossing safety programs implemented over the last several years have proven effective and played a major role in the reduction of accidents and fatalities. If this progress is to continue, a renewed effort will be required by all parties. Current initiatives have proven effective and must be continued; in addition, new ideas, action plans, and research will be required.

The following initiatives, in our judgment, have the strongest chance of decreasing the number and severity of rail-highway crossing accidents. (The FRA recommendations are grouped according to education, enforcement, engineering and evaluation.)

Education: Rail-highway crossing accident data, and the history of Operation Lifesaver, provide a graphic example of how effectively public education can work if properly targeted. The propensity of motorists to run through or drive around even the most plainly marked crossings brings home the fact that for all our improvements in technology, an effective public education program will remain at the heart of future efforts to reduce accidents and fatalities. Implementation of the following recommendations would maximize the effectiveness:

- o Operation Lifesaver is the fulcrum program of the public education effort. It should be a fifty State program. And it is essential for everyone with a stake in rail-highway crossing safety -- railroads, organized labor in both the railroad and trucking industry, public agencies, automobile associations, trucking organizations, and educators, among others -- to intensify their commitments of time and human resources to the Operation Lifesaver program.

- Under the leadership of NSC, a standard rail-highway crossing safety pamphlet should be developed for inclusion in all highway license manuals. A shortened form of the pamphlet should be designed for inclusion in all license renewal application packages sent to motor vehicle drivers.

- Motorists' failure to appreciate the difference in stopping capability between a moving train and a truck or automobile appears to be a major, and possibly the major contributing factor in rail-highway accidents. A standard passage illustrating the difference in stopping capability between a rubber tire on pavement and a steel wheel on a steel rail should be incorporated in every driver training manual. A question on the point should be incorporated in every written driver examination.

- Public education should not be delayed until an individual reaches the legal driving age. Educators at the primary and secondary school level should work to build awareness of the dangers through such devices as poster contests and safety campaigns.

Enforcement: In 1984, more than one-half of all rail-highway crossing accidents occurred at crossings with gates, bells, or flashing lights. In addition to educating motorists about the hazards of disregarding active warning devices, law enforcement officers, the courts, and State and local legislators must strengthen and consistently enforce safety laws. Strict law enforcement does have an impact on human behavior. It is a sad irony that drivers will slow to 25 mph in a low speed zone to avoid a traffic ticket, but will not stop at a marked crossing to protect their lives. Recommendations:

- Local law enforcement officials must increase (and visibly increase) surveillance at heavily traveled crossings, and more strictly enforce crossing laws on those who violate them.

- Law enforcement and railroad officials should initiate pilot programs in which railroad personnel identify those crossings which have repeated active warning device violators and then inform local police about train schedules so law enforcement officials can schedule surveillance at these "high exposure" points.

- Operation Lifesaver officials should work with law enforcement and judicial organizations to develop special presentations emphasizing the importance of visible efforts to enforce crossing laws.

Engineering: The $1.6 billion allocated to the States for crossing improvements has greatly reduced the physical and operational problems of the Nation's most hazardous crossings. Reality suggests, however, that many of the remaining crossings serve rail-highway traffic volumes too low to ever justify installation of automatic warning devices. We must develop low cost mechanisms to better safeguard these "low volume" crossings if we are to have any real expectation of further improvement in accident ratios. Recommendations:

- Safety improvement at rail-highway crossings should remain eligible for funding through the Federal Highway Trust Fund. Eligibility should extend not only to the installation of automatic warning devices, but also to lower cost alternatives for crossings where rail-highway volumes cannot justify the installation of automatic devices.

- To address problems arising at these "low volume" crossings, there is a pressing need for development and perfection of low cost alternatives to the automatic warning device. Such alternatives range from special pavement markings to grading and lighting improvements; from seasonal factors, such as winter snow removal, to brush control. Federal agencies like FRA are in a unique position to serve as focal points for gathering information on experiences and innovations throughout the 50 States, and ensuring that they are effectively communicated to State and local officials.

- FHWA efforts to promote low cost alternatives on a corridor by corridor basis deserve support. FRA will make its field inspectors available upon request to evaluate risk exposure at existing crossings, and advise State and local officials on corridor resource allocation decisions.

- It is essential to focus available resources on projects where the dollars spent will produce the greatest return in real safety improvement. Funds available for grade crossing safety enhancement are finite. Investing those dollars in projects with low cost benefit ratios can have a negative safety impact by drawing funds away from projects with a greater impact on human safety.

Evaluation: The NSC, FHWA, and FRA, individually and at times collectively, are conducting or sponsoring research on educational, engineering, operational, and analytical ways to improve crossing safety. These efforts should continue; expanded participation by the private sector and State officials could meaningfully enhance their success. Recommendations:

- FRA should complete the development and refinement of its accident severity prediction formulas, and share their data with State and local planning officials. The data should be incorporated into resource allocation procedures, and used in the preparation of both FRA and individual carrier inspection plans.

- FRA and NSC should evaluate the Texas "800 number" experiment, and on the basis of that evaluation, advise other States on the potential impact of a national expansion of the program.
- FRA and the FHWA should expand their accident prediction formulas to develop corridor accident and severity prediction formulas, which identify a series of crossings that should receive priority evaluation for corridor solutions.
- The National Inventory indicates that approximately 12,200 crossings do not have warning signs. There is a pressing need for States to accelerate the placement of signs at the crossings that lack signage. The lack of even the most rudimentary warning sign at these crossings constitutes a continuing public safety exposure.
- Federal and State agencies should jointly study the impact of potential litigation exposure on State usage of data from the crossing inventory and accident prediction formulas.

CAUSE OF GRADE CROSSING ACCIDENTS

Mr. **Riley**. But the bottom line to it is that a majority of the accidents that occur at grade crossings still occur at crossings which have operating lights, flashers, and gates. People simply drive around them. And that to me, is solid evidence of the fact, that while there are physical improvements we want to continue to make, which is why we are still supporting that program which funds the creation of lights, and flashers, and so on, the issue is education. You have got to get inside people's heads and that is what makes it one of the toughest issues to deal with because it is so hard to define.

We have all of our field inspectors devote one day a quarter to going out to businesses, schools, and communities, that need the rail lines and just lecturing them on the problem.

ACCIDENT PREDICTION INDEX

This Committee earmarked $200,000 for research and development last year for this fiscal year on grade crossings and what we are going to do with that is use it to improve our accident prediction index and to forward these education processes with better materials. I am open to any suggestions because there are some things where you can reach out and say, if we make this rule, if we build this barrier, we can fix it. We have made some rules and we have built some barriers and we will make more rules and build more barriers, but the truth is, we will not be able to make a substantial improvement in this project until we can fix clearly in people's minds the dangers of running a grade crossing as we have begun to fix the dangers of driving a car without a seat belt.

And that is really the answer to it, I am sorry to tell you.

Mr. **Pursell**. I have been in cars where the driver wanted to try to beat the train. It is just a little chemistry there that says that you can get around that grade crossing and it seems to be an immediate challenge to save five minutes and some times lose your life.

R&D STUDY OF GRADE CROSSINGS

Mr. **Pursell**. Are you comfortable that you have done all the research and development up to the point where you think that education is more important now?

Mr. **Riley**. I really am. And I will tell you why, because the private vendors are doing an enormous amount of research and development on this. This is one area where government has not had to take the lead because the industry is so exposed from these accidents that occur, that they are constantly looking for a better mousetrap.

We have tried to put our money into research areas where there is no cost benefit to the industry and therefore, the pure safety research will not be done unless we do it.

I went to a trade show in Chicago, earlier this year, and it is remarkable what they now have for gates and flashers at the railroad crossings. They now have gate and flasher equipment which not only works but it has an internal recorder that will tell you the speed at which the train approached the crossing, that will tell you the precise point at which the lights went on and the gates went down and will tell you when they came back up again.

And they have now designed a system which will automatically tell a central point if, in fact, there has been a malfunction somewhere in that grade crossing that they can get out and fix.

There has been a lot of progress made. Although we find that we looked at over 18,000 grade crossing accidents and found a total of 60 in which there was even an allegation that the equipment did not work. We looked into that allegation and we found in most cases, that what that meant was that one of the four lights were out. But very, very rarely do you have a malfunction to lead to an accident.

I think that there are—to kind of say it in an underview and I have probably thought about this more than any other safety problem, other than alcohol and drugs, it is just so frustrating. When you get to be an administrator, you just want to reach out and fix things and this is one that you just cannot reach out and fix.

There are still some grade crossings in this country, which are not yet equipped with lights and flashers and should be. That is why we are continuing our support of that effort.

We have developed an accident prediction model where we interface on a single—I should say we are developing it, we are a good ways along—but we can interface on a single computer screen, hazardous materials movement, passenger movements, and grade crossing histories to help states allocate where they want to spend their money.

And those are the kinds of things that we are doing but even when that is done, the fact that more than half the accidents occur when the driver has literally driven around a down gate and the fact that the average—this is a startling figure—but the fact that when a person hits the train, the average strike point is the thirteenth car. That tells you an awful lot about the nature of the problem.

A man who worked for me in Senator Durenberger's office drove into the 26th car of a Burlington-Northern freight shearing off a closed gate. It is hard to understand. I wish that I had a better answer to it.

HIGH SPEED RAIL STUDIES

Mr. PURSELL. One last quick question: How involved are you in either studies or impact of the high speed rail efforts in this country? There seems to be a revised interest in that area.

Mr. RILEY. I have a lot of interest in that field. And, in fact, I have only received one award in the time that I have been Federal Railroad Administrator and I was named Highspeed Rail Man of the Year.

Not so much for anything that I did as an administrator, but I really do believe that within our lifetimes we are going to see a highspeed rail system functioning in this country. I think the best probability of that happening is in Florida, not only because the demographics are good, but because in Florida, you have the right blend of state and private commitment to the project.

FRA has funded a number of studies, over time, to do market analysis and come up with some objective numbers. We have almost exhausted the funding in that program.

Mr. PURSELL. You have no funds presently available for that area?

Mr. RILEY. I think there is a very small residual in that account. And it is not enough to fund a study. It is a diminimus amount.

Mr. PURSELL. Is there any area in your budget where you can reprogram dollars if you felt something was meritorious?

Mr. RILEY. I would have to tell you that I cannot honestly answer that question without looking back through our budget.

There is a very small amount of uncommitted money in that account, but like I say, it is about $60,000, nothing that would fund much of a study.

But we did four of them last year. I think that we made a contribution with those studies, but I am not convinced that our funding those studies is necessarily in the long-term good of the highspeed rail movement and here is why.

We are in a very good position right now, because we have a number of other nations who have developed excellent highspeed technologies who are trying to sell us their products. The potential gain on that is enormous and the truth is that for a legitimate project, study money is relatively easy to get. It is relatively easy to get. And that is sort of a litmus that the market creates for these projects. If you cannot get either a state legislature or a coalition of competing vendors, so that the numbers are objective, to fund a study at the $150,000 or so level, it says something about the way the other people view your project. And we all have a big stake in having the first one of these projects to break from the gate—succeed—because if it does, the others will go. And if it does not, they will probably be set back a long way.

I say that my comment is without reference to any specific project, but it is just a general concern that I began to develop as I was looking at the study grants that we were handing out. Some of them studied very good and worthy projects, like the Florida one. And there were others, frankly, where I am not sure that we forwarded the discussion by the grant decisions that we have made.

And I think when people have to compete on a different level for that first $100,000 or $150,000 it is a good threshold test for the serious projects over the ones that are not.

Mr. PURSELL. Thank you, Mr. Chairman.

GRADE CROSSING FINES

Mr. LEHMAN. Frank?

Mr. WOLF. Thank you, Mr. Chairman.

I want to welcome Mr. Riley; I think that you do a good job and I really do not have a lot of questions.

Just one that you raised, is on the crossings, have you looked at the influence of fines? Would it make a difference if fines are high or if fines are low?

Mr. RILEY. I think that is a very good question. One of the key recommendations in our report on grade crossings this year is that more rigorous law enforcement at grade crossings could make a difference in changing public attitudes.

I happen to live in your District and it occurred to me that there is a little stretch of road that I drive down with a 25 mph speed limit that the police closely patrol. And I never go over 25 on that road, because I do not want to explain to Elizabeth how I got the ticket.

But it is funny that we will drive at 25 mph to avoid a ticket, but we will risk our lives running in front of a train because we are the only judges of whether we think that we can make it or not.

And I really believe if there were more stringent law enforcement at these grade crossings, that we really could affect public attitudes.

If the kind of watch that we place on the 25 mph zone maybe once every two or three weeks, was placed at a very busy grade crossing, it would help.

Mr. WOLF. We had this problem on the Potomac River here, at the Little Falls Dam. Up until last year, when someone went out and had to be rescued they were fined $15. Now, we have arranged for the fines to be very stiff and it has had an impact.

I just wondered if greater fines and more law enforcement would help with this problem.

The other idea I wanted to raise is, has it ever been considered for a picture of an accident to be placed at the crossing?

Mr. RILEY. It has not, but that is an interesting idea. We have just been working with a group to put together some posters showing some—it sounds like a cliche—but showing some gruesome pictures just as we all looked at when we took our driver education.

But I think that it does make an impression on some people's minds.

GRADE CROSSING SAFETY PUBLICITY

Mr. WOLF. What if you picked the top ten accident crossings and did something like that? What we are trying to do here on the Potomac River, every spring with the drownings, is to work with Park Service whereby there will be the placement of a cross or a symbol to warn of potential danger. Have you ever been to the Berlin Wall? At the Berlin Wall they have crosses where people have tried to leave East Berlin. It makes an impression that these people were killed at this point.

We are negotiating with the Park Service, whereby they will have some symbol along the Potomac River, at a point where somebody has entered and drowned. Have you thought about anything like that?

Mr. RILEY. To be honest with you, I have not, but I like the idea and I am not just saying that because this is a hearing. I think that there is some impact on that. I have driven on highways in the west where they have put crosses out where there have been fatal accidents at intersections, and you see it and you realize what it means.

There may be value to that. That is a good idea.

Mr. WOLF. Thank you, very much.

Mr. Chairman, I have nothing further.

GRADE CROSSING ACCIDENT STATISTICS

Mr. **Lehman**. Before yielding to Mr. Durbin, what states have the worst record on these grade crossing accidents, do you know?

Mr. **Riley**. We can get that information for you. I think that we know but I do not want to shoot from the hip on it.

We have a file on every grade crossing in the country with its demographics and its accident histories, and we can pinpoint not only the worst states, but we can tell you the worst crossings in those states.

And we use that to help the states and advise the states on how to allocate their resources.

Mr. **Lehman**. Maybe the five best and the five worst.

Mr. **Riley**. All right.

[The information follows:]

Grade Crossing Accidents

States	*1984 accidents per 100 crossings*
5 poorest records:	
Alaska	8.7
Louisiana	7.2
Texas	5.8
Arkansas	5.1
Mississippi	5.1
5 best records:	
North Dakota	.5
Nevada	.8
South Dakota	1.3
Vermont	1.3
Rhode Island	1.5

Mr. **Lehman**. Mr. Durbin?

GRADE CROSSINGS SAFETY PUBLICITY

Mr. **Durbin**. Thank you very much.

I would like to stay on that topic for a second. Prior to being elected to Congress, I was a trial lawyer. I defended and prosecuted railroads on traffic problems, accident crossings, fatalities, and the like. I think one of the most graphic things I ever saw was a local television station that put a TV camera on engine of a train as it went through my home town. You watched every crossing as these cars pulled right up and jackrabbited across at the last second.

You were just sure, a dozen times, that they were going to be killed. People do the craziest things, and from the railroads point of view, of course, they want to get that message across. People are doing crazy things, taking their life in their hands.

I would suggest that that kind of footage, together with what Frank said, would tell a lot of the story.

Mr. **Riley**. That is very telling. I have ridden in the locomotive cabs of a lot of carriers in the course of this job, and you can do a 100-mile shift and are almost guaranteed to see somebody—and I like your phrase of jackrabbiting—you are almost guaranteed to see somebody trying to jackrabbit in front of the train.

I was riding the Bangor and Aroostook in Maine and I watched the same person follow the train around three crossings, wait until the last possible second and then jump in front of us and he did it two more times.

And finally, we just brought the train to a halt to get rid of him before he killed himself and killed us. Most people do not recognize, and I think this is the key thing, that most people do not recognize that a steel wheel on a steel rail does not stop in the same stopping distance as a rubber tire on asphalt pavement.

We are all conditioned to judge stopping distance by tires and pavement. It takes a train well over a mile to stop at a distance a car can stop in, as you know from your experience, in a few hundred yards.

And that is a message that I think that we just have to get across. If you are on the track and the train can see you, the odds are pretty good that he cannot stop. He may be able to slow down but he cannot stop.

Mr. DURBIN. And he has a difficult time trying to turn to avoid you.

Mr. RILEY. True, and he cannot touch the brakes. A train either has its brakes on or it has its brakes off. You cannot just touch the brakes on a train.

Mr. DURBIN. If I could move to another area, I just have a question or two?

Mr. RILEY. Sure.

CONRAIL SALE EFFECT ON ILLINOIS

Mr. DURBIN. My Illinois railroads continue to have serious problems with the sale of Conrail. Despite statements to the contrary from the Secretary and in your own testimony, I still believe—and many of those railroads apparently share my belief—that if we allow the sale of Conrail to Norfolk Southern, it is going to seriously hurt competition in my home state of Illinois. It is going to be to the detriment of existing railroads.

Could you address that again, even though as I looked at last year's testimony, I think we might have spoken to it then?

Mr. RILEY. I will just briefly comment in an overview, of course. The Justice Department has reviewed that issue and has not supported the positions of those carriers.

But above and beyond that, when you look at Illinois, there are two key gateways in Illinois for east-west traffic—one at Chicago and one at St. Louis.

Ever since the merger of the Pennsylvania and the New York Central, there has only been one single line carrier between those two gateways and the east coast, and that is Conrail.

They have had a legislative monopoly on single line service. At the conclusion of this merger, there will be two because the Guilford system will be running on the same track that Conrail N-S is running at between those two gateways. And it will be the first time in more than 20 years that shippers will have had two competitive options so that they can bid off against one another, head-to-head.

In addition, the Justice Department really was tough on the issue of reciprocal switching which is a very real issue out in my area of the midwest and others. Right now, Conrail's reciprocal switching charges start at $296 and when you count wheelage in areas like Indianapolis, they can go up to $430 or $435. Justice absolutely has locked in the reciprocal switching charges at $250 a car on this system and there is an index for inflation for the future.

So, two quick overviews, and there are a lot of details to this which I can provide in writing for the record.

You have competing carriers where you did not have them before. You have lower reciprocal switching rates which has to increase competitive access and, in addition to that, the Norfolk-Southern deal reopens more than 100 gateways and joint routes that were closed by Conrail, in its mass route closing, some of which are the subject of litigation with these same railroads.

Now, Norfolk Southern has never assumed that it would get the bulk of its benefit from this from diversions in the Midwest. The assumption is that they would get the bulk of the benefit from the middle Atlantic states, and diversions from trucks.

ICG-NS NEGOTIATIONS

And they have offered to guarantee, for example, the ICG's gateways out to the year 2000. The offer has not been accepted but I would be glad to put that offer in the record, just to make the point that it is real and it does exist.

[CLERK'S NOTE.—The FRA has subsequently advised the Committee that Norfolk Southern refuses to provide this information.]

Now, we have been pressured to forgive the ICG's debt, and we really do not have the authority to do that. And I think a lot of the issues that keep those railroads apart are issues that do not really relate to the economics of this merger so much as they relate to other things that the carrier sees that they can get some leverage on with this merger.

I cannot fault them for doing it, but I do not think that it really relates to this merger.

GUILFORD VIABILITY

Mr. DURBIN. I suppose one of the things we hear repeatedly is that Guilford, for example, is considered financially marginal and we should not put a lot of faith in that railroad as a real competitor, over the longterm. If we allowed the merger to take place, what kind of evidence do you have that leads you to the conclusion that they would be competitive?

Mr. RILEY. A railroad is only as profitable as the communities it serves and the lines it runs on. I really have to say that you have got to remember that Guilford is being put on the best, the fastest, the shortest turn-around lines between New York and Chicago, New York and St. Louis, and I think you could even go out and create a new carrier and put them on those lines. You could put Lionel on those lines and they ought to run successfully because they have got the traffic base.

Mr. DURBIN. Well, maybe not Lionel.

Mr. Riley. Maybe not Lionel, but I say that to illustrate a point. Tim Mellon began to assemble the Guilford system four years ago. He bought the Maine Central, he bought the Boston and Maine which was in bankruptcy at the time, and he bought the Delaware and Hudson from me, and I was happy to sell it to him because I was losing about $20 million a year on it.

He has netted that system together into a little system now, where two of the three railroads are profitable on a cash-flow basis and the other breaks even.

They have done, in effect, what Conrail did, only without Federal assistance. There is no question about their ability to run the railroad. There is no question about Tim Mellon's assets. He put almost a $1.2 billion on the table bidding for Conrail. But you see he had a real anti-trust problem because Guilford was the only competitor with Conrail in the whole New England region that ran any length of haul. And that was just not doable from a competitive perspective.

DIVESTITURE TO GUILFORD

Why was Guilford chosen to solve the anti-trust concerns of Justice? For the simple reason that single line rates are virtually, in every case, cheaper than joint rates. And if you are going to have competition, it has got to be single line to single line.

Guilford was the only carrier that had the eastern gateway in Buffalo. So Guilford, if they bought the divested lines, could offer single line competition all the way from the eastern ports to the key midwestern gateway, which nobody else could do.

DIVESTITURE TO P&LE

Pittsburgh and Lake Erie is a whole different issue. They are not the competitive fix. They are a railroad that we did not think could survive if Conrail was left to stand alone and we did not want to have a bankruptcy or a loss of service over 500 miles, so we just redesigned the P&LE to repair their structural weaknesses.

DIVESTITURE TO GUILFORD

But Guilford is the competitive fix and I really think that you have to judge the ability of a competing railroad by the lines that it is on and the shippers that it serves.

And you know, one of the interesting twists on the Justice Department's order is that Guilford does the reciprocal switching for half of the traffic on those lines and NS does it for half. Justice insisted on that. They called it "mutually assured destruction" so that Guilford and NS each had a stranglehold on the pick-up and interchange of half of that traffic. It does not mean that they will each get half of it. But what it does mean is that it is a way of creating a structural thing that equates market power.

I have one more point that I want to raise on that which just occurred to me. You know, the way the Justice Department has structured the divestiture is designed to keep Guilford competitive.

In the good times, when there is a lot of traffic and the economy is strong, there is never any problem with competing because there is enough business for everybody. The issue is in the down times, and by putting Guilford in on trackage rights, rather than making them buy the line, Guilford's costs go down when their volume goes down so that they can remain a low-cost carrier even in recessions.

Norfolk Southern's unit costs go up when traffic goes down and that is just part of a very complex structure. All of those pieces together lead us to believe that this will work.

ILLINOIS RAIL COMPETITION

Mr. DURBIN. It appears from the Senate vote that you are on a roll. I do not know if you will have similar success in the House. If you do, I certainly hope your analysis is correct, because I think rail competition in my state is absolutely essential.

Mr. RILEY. Yes, I agree.

ICG RESPONSE TO FRA

[CLERK'S NOTE.—The following was inserted in the record at this point at the request of Mr. Durbin.]

RICHARD J. DURBIN
20TH DISTRICT, ILLINOIS

WASHINGTON OFFICE:
417 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-5271

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON AGRICULTURE AND
RURAL DEVELOPMENT
SUBCOMMITTEE ON TRANSPORTATION

Congress of the United States
House of Representatives
Washington, DC 20515

IN SPRINGFIELD:
1307 S. 7TH ST., 62703
(217) 492-4062 OR
P.O. BOX 790 62705

IN DECATUR:
ROOM 110, 363 S. MAIN ST., 62523
(217) 428-4746 OR
P.O. BOX 1806 62525

IN QUINCY:
ROOM 305, 531 HAMPSHIRE ST., 62301
(217) 228-1042

April 18, 1986

The Honorable William Lehman
Chairman
Subcommittee on Transportation
2358 Rayburn HOB
Washington, D.C. 20515

Dear Bill:

During the Transportation Appropriation Subcommittee hearing on the FY 1987 budget request for the Federal Railroad Administration, the members of the Subcommittee asked the FRA Administrator a number of questions regarding the Secretary of Transportation's proposal to sell Conrail to Norfolk Southern. As you know this is a critically important issue to the future of our nation's rail transportation system. I am particularly concerned about the potential adverse effect of the Norfolk Southern proposal on rail transportation and manufacturing and agricultural shippers in Illinois.

In response to these questions from the members of our Subcommittee, the Administrator of the Federal Railroad Administration made a number of statements which the Illinois Central Gulf Railroad believes seriously misrepresent the facts and its position on the Norfolk Southern proposal. Enclosed is a copy of a letter I recently received from the Chairman and Chief Executive Officer of Illinois Central Gulf Railroad, Harry Bruce which summarizes these discrepancies. Given the importance of these issues to the rail transportation system in Midwest, I would would like to request that this letter be included in the Subcommittee's hearing record.

Thank you for your consideration.

Sincerely,

Dick

Richard J. Durbin
Member of Congress

RJD:jj

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

Illinois
Central
Gulf

An IC Industries Company

Harry J. Bruce
Chairman and
Chief Executive Officer

Illinois Central
Gulf Railroad
Two Illinois Center
233 North Michigan Avenue
Chicago, IL 60601 - 5799
(312) 565 1600

April 8, 1986

The Honorable Richard J. Durbin
U.S. House of Representatives
417 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Durbin:

I appreciated the opportunity to meet with you recently to discuss Conrail and some of the other important issues facing the Railroad Industry. As I said during our meeting, we at the Illinois Central Gulf Railroad appreciate your active interest in these issues.

You have accurately perceived that the Administration's proposal to merge Conrail into the Norfolk Southern Corporation could have a substantial adverse impact on the State of Illinois, all of its railroads and their employees, and the communities and shippers we serve.

Given the facts, we were very disturbed to learn that in recent testimony before the Transportation Appropriations Subcommittee, John Riley, the Federal Railroad Administrator, not only challenged our view, but went on to suggest that we were opposing the Administration's proposal in hope of having our debt to the Federal Government be forgiven. Frankly, we were at a loss to understand why Mr. Riley made such statements, or told you that the FRA has been "pressured" to forgive our debt.

These are serious misrepresentations of both the facts and our position with respect to the merger, and I would like to address them. First, the merger of Conrail with a major southeastern railroad such as Norfolk Southern would have serious anticompetitive consequences. The excessive market power of this huge new carrier would divert substantial amounts of traffic from smaller, regional railroads including ICG. These recurring annual freight losses would, in turn, undermine our ability to continue reliable, competitive service to our communities and customers, as well as cause employee lay-offs.

Early in the Department of Transportation's deliberations, we had several meetings with Mr. Riley and his staff to inform them of our concerns. Moreover, on July 13, 1984, some six months before her final decision in favor of the Norfolk Southern, I wrote to Secretary Dole, stating in part:

> "ICG has identified the potential for serious impact if the purchaser should be a major southeastern railroad, CSX Corporation or Norfolk Southern Corporation. Such a combination would have serious antitrust implications. Our Company faces an exposure to a loss in recurring annual revenue which could make the difference between future profitability for the ICG and the need for government assistance and perhaps drastic service contraction."

I received no reply to my letter and the rest, as they say, is history. The ICG has had no recourse but to oppose the Administration's merger proposal because of its anticompetitive impact on our railroad, its customers, our State of Illinois and the Nation.

The ICG has conducted a detailed analysis of our potential traffic diversions which has been refined with the help of an independent consultant. Our analysis which shows we would suffer recurring annual freight diversions of $32.3 million has been substantiated in independent reviews by the U.S. Railway Association and the staff of the Interstate Commerce Commission. We have submitted these detailed estimates in testimony before House and Senate Committees. Our estimate of the potential damage to ICG from this merger is objective, accurate, and on the record. FRA continues to ignore these reasoned estimates. As you can see from Mr. Riley's testimony, FRA has steadfastly refused to make public the various "diversion studies" which it maintains that it has conducted.

Second, Mr. Riley asserts that Norfolk Southern has offered ICG a contractual guarantee to protect our gateways out to the year 2000. Implying that this proposal would fully protect the ICG, he offers to provide it for the Subcommittee's hearing record. We hope that he does make it available soon, for then the world can see that the Norfolk Southern offer is glitter, not substance. While we did have some early conversations with Norfolk Southern officials, it was apparent that they were not prepared to offer the ICG any meaningful negotiated concessions. To our dismay, we learned that Norfolk Southern and the Administration were using these conversations repeatedly for political purposes by continually representing that the ICG was in serious negotiations and close to a deal. I assure you that this was never the case. For these reasons, we have terminated any discussions with Norfolk Southern and do not intend to resume them.

Third, and perhaps most important, Mr. Riley indicated that ICG's chief concern is not the economic injury which will occur from the merger, but rather an opportunistic demand that the federal government forgive $152 million in preference share debt owed by the ICG. He went on to state that the government has been somehow "pressured" to forgive this debt. We simply cannot countenance such a serious misstatement of our position.

ICG would be foolish to relinquish our opposition to the merger in exchange for debt forgiveness. The present value of our government debt is only slightly more than one year of freight loss from the merger. I would emphasize again that the ICG's annual freight loss of $32.3 million will recur each year if the merger is approved. Further, Mr. Riley misleads the public when he suggests that we are pressuring him. As you know, it is not within FRA's administrative authority to waive our preference share obligations. As we understand it, an amendment to the 1976 enabling legislation would be required. Therefore a demand upon FRA for debt forgiveness would be meaningless. Any perceived pressure on the FRA Administrator regarding this topic is erroneous. Our only active effort to mitigate the impact of this merger was to support amendments to the Administration bill in the Senate which would have afforded some gateway and interchange protection for regional railroads such as ICG.

The ICG unequivocally opposes the Administration's proposed super-merger of Norfolk Southern and Conrail. We do so because it is bad transportation policy. We are not seeking an agreement with Norfolk Southern because no agreement with them would fully mitigate the anticompetitive impact of this merger on the ICG, our customers, our State, and the Nation. Further, we have never attempted to pressure the FRA to forgive ICG's preference share debt.

We believe Conrail should be returned to the private sector as an independent carrier at a sale price which reflects its true value. A public offering is the best way to achieve this goal in the interest of our taxpayers and our national transportation policy.

Congressman Durbin
Page Four
April 8, 1986

I hope that this statement of the ICG's position concerning the sale of Conrail is helpful. I also regret that we have had to engage in such a rebuttal, but unless misrepresentations such as these are corrected, they seriously undermine the factual and informed debate on which you and your colleagues rely in making important decisions on this vital national issue. Please let me know if I can provide you with further information.

Sincerely,

Harry J. Bruce

ALCOHOL AND DRUG RULE

Mr. **Durbin**. I would hope that whatever we do here does not diminish that.

Let me close, by congratulating you on your rule on alcohol and drug use in railroad operations.

Last year, I asked a few questions about your highest priority, and that was it. You deserve commendation for that.

Thank you very much, Mr. Chairman.

PURCHASE PRICE REASSESSMENT

Mr. **Lehman**. Thank you, Mr. Durbin.

Conrail posted another year of strong earnings in 1985, with net income of some $440 million. This follows earnings of $500 million in 1984 and $313 million in 1983. Should Norfolk Southern be asked to reconsider its purchase price based on Conrail's most recent earnings and financial outlook?

Has the intrinsic value of Conrail increased over the last year?

[The information follows:]

I don't believe that a reassessment of Norfolk Southern's purchase price based on Conrail's recent earnings and financial outlook would yield a higher price. The purchase offer submitted by Norfolk Southern is the result of its assessment of Conrail's current value and future expectations. Conrail's actual performance has closely matched Norfolk Southern's estimates and Conrail's future prospects, standing alone, are not good. Current financial results being reported by Conrail are the result of management efficiencies in the form of plant closings, employee reductions and rate adjustments, not increased traffic. Conrail's tonnage shipped has declined from 268 million tons in 1977 to 182 million tons in 1985. While Conrail expects this trend to stabilize over the next five years, Norfolk Southern believes it will continue to decline. In a recent Norfolk Southern report dated December 1985 entitled "Conrail's New Crossroads" Norfolk Southern reconfirms its expectations concluding "Conrail standing-alone . . . faces a dim long-term future and its viability is questionable."

Combining the public interest covenants and substantial concessions that Norfolk Southern has negotiated with the Department of Justice, states, shippers and other interested parties in order to enhance the quality and competitiveness of service in its region, suggests that Norfolk Southern is already paying well in excess of the $1.575 billion it is laying out to the United States Government and the employees on Conrail. We conducted an open bidding process and Norfolk Southern's bid was the best. Events since the end of that bidding process have confirmed our judgement.

The intrinsic value of Conrail has not increased over the last year. For all of its book profits, Conrail has marginal cash flows. Conrail reported a net income of $442 million for 1985. However, net income is not a bottom line figure. It measures Conrail's income but not its net cash position after the railroad makes the enormous capital investments necessary to keep its facilities in sound operating condition. In recent years, those investments have exceeded $500 million annually; that figure will grow to more than $600 million a year over the last half of this decade. When one looks at cash flow figures—Conrail's actual bottom line, after taking account of capital investment—the picture changes dramatically. We should be concerned about cash flow, which properly reflects deductions for expenditures necessary to preserve the service viability of the railroad.

For example, Conrail claims a "net income" of $20 million for the first two months of 1986. That seems impressive, but after capital investments are accounted for, Conrail's cash reserves have actually dropped by $29 million over the same period. To save the same thing another way—despite impressive net income figures—Conrail's cash reserves have been dropped $0.5 million a day since January 1. Were it not for the layoffs, property sales and abandonments, state tax exemption, and federal labor protection subsidies, Conrail's annual operating losses would reach the hundreds of millions of dollars.

With capital expenditures factored in, Conrail's consolidated cash flow in 1985 was a marginal $64 million considering that its total annual revenues exceed $3 billion. Conrail's cash flow was marginal despite the fact that it liquidated about $90 million in property to strengthen its cash flows, eliminated almost 2,800 employees, and scheduled more than 570 miles of line for potential abandonment. Conrail cannot continue indefinitely to shrink itself into solvency, and yet a stand-alone Conrail can do little in the face of declining volumes other than curtail service and lay off employees.

CONRAIL STAND ALONE VIABILITY

Mr. LEHMAN. Last year you testified that Conrail was a "fragile entity" that could only just barely survive a recession on its own. Taking a look at Conrail a year later, do you feel any differently—are they now in a better financial position to prosper as a stand-alone railroad?

[The information follows:]

To the contrary, Conrail's numbers are pretty much as expected. Conrail's net income has improved not as a result of increased traffic but rather a combination of unique statutory benefits granted by the Northeast Rail Service Act of 1981 (NERSA) and severe operating reductions in plant and personnel. The statutory benefits include: (1) state tax exemption, (2) wage concessions from employees, (3) payment by the Federal Government of employee protection costs, and (4) expedited treatment in its abandonment of property. For 1985, benefits received by Conrail under NERSA represent about $57 million of Conrail's $442 million in net income. In addition Conrail eliminated almost 2,800 employees and scheduled more than 570 miles of line for potential abandonment.

Despite the NERAS benefits and reductions in plant and personnel, Conrail's consolidated cash flow in 1985 was a marginal $64 million and included almost $90 million in liquidated property. For the first two months of 1986 Conrail's net income was $20 million while the company's cash flow dropped by $29 million over the same period. Conrail's traffic base continues to decline on an average of 3.6% a year. In 1985, in fact, Conrail's tonnage dropped 5.7% from 1984, from 192 million tons to 181 million tons and 5.2% below Conrail's projected tonnage for 1985. This trend is pretty much as expected because of its inability to effectively compete in north-south movements and a lack of a solid coal base. Clearly, Conrail cannot continue indefinitely to shrink itself into solvency, and a stand-alone Conrail can do little in the face of declining volumes other than curtail service and lay off more employees.

CONRAIL EARNINGS PROJECTIONS

Mr. LEHMAN. According to the latest projections we have seen, June 7, 1985, Conrail expects its pre-tax earnings to be in the $430 million to $550 million range for each of the next five years. What earnings record would you expect Conrail to achieve over the next five years if it were to remain a stand-alone corporation?

[The information follows:]

We have not recently made a projection of Conrail's earnings. Note, however, that earnings alone are a poor indicator of Conrail's financial position because they are not a "bottom line" figure. Far more important is its increase (or decrease) in cash balance after payment of debt and adequate investment in plant and equipment. That was the "profitability test" specified by Congress in NERSA and used by USRA in its profitability finding, and we think it remains the best measure.

The Norfolk Southern recently updated its estimate of Conrail entitled "Conrail's New Crossroads." The report reviews Conrail under the Morgan Stanley option which is essentially a stand-alone Conrail in the private sector. The analysis projects tonnage of 182 slipping to 169 million by 1989 in contract to Conrail's forecast of 189 million tons by 1989. Pre-tax earnings likewise drop sharply from $441 million in 1985 to $180 million by 1989 compared to $548 million projected by Conrail. As earnings decline, marginal cash flow today, heavily supported by property sales, turns negative particularly under a scenario of dividend payments to support a stock price.

We strongly support Norfolk Southern's estimates in terms of magnitude, implications and trend and agree Conrail's prospects are not encouraging as a stand-alone corporation.

A brief review of Conrail's original estimate for 1985 would shed light on the validity of its latest estimates. Any projection showing a leveling or increase in traffic from a steadily declining traffic base should be treated with a great deal of skepticism. Conrail's vulnerability in its joint line north-south routes prevent it from competing effectively with trucks, and its lack of a solid coal base make it particularly subject to the fluctuations of the northeastern economy.

(Millions)

	1985 Actual Results	1985 Projection* June 1985	1985 Budget December 1984	1985 Projection* June 1984	1985 Projection* June 1983
Tonnage	181	182	191	196	183
Revenues	$3,154	$3,206	$3,404	$3,559	$3,593
Expenses	2,764	2,804	2,991	2,984	3,290
Other Income, Net	52	55	64	13	(13)
Income before Federal Income Tax	$ 442	$ 457	$ 478	$ 588	290
Cash Increase	$ 64	$ 149	$ 174	$ 231	$ 56

*From Conrail's Five Year Outlook prepared in June each of those years.

There is a clear trend in those projections and results. Except for the very conservative 1983 projection, each subsequent projection was more modest than the one that preceeded it. That has been true of Conrail projections since it began. The trend of declining traffic has continued with only minor, short term upward fluctuations.

CBO ANALYSIS OF CONRAIL SALE

Mr. LEHMAN. The Congressional Budget Office recently reported to the Senate Appropriations Committee [February 1986] that the Norfolk Southern proposal would actually end up costing the Federal Government about $250 million by 1991.

They say the $1.2 billion purchase price would be offset by losses of about $1 billion in foregone interest and dividend payments to the Treasury from Conrail and about $500 million in lost tax revenues.

Do you agree with the CBO's analysis?

Mr. RILEY. Well, most of the CBO's arguments were not unique to Norfolk Southern. They were arguments that would apply to any sale. CBO makes two assumptions and I do not agree with it and I will tell you why.

They say that we would lose about $1 billion in foregone interest. Under the financing agreements that Conrail has, at the point in time, where its earnings and profits account turns from negative to positive, it has to begin to make some payments back to the Federal government. And they are assuming that they will be able to make $250 million a year in payments. They make that assumption because that, in fact, is what the financing agreements call for.

But the fact that the financing agreements call for it is not related to Conrail's ability to perform. Here is a railroad that did not generate any new cash in the last 16 months, and it is inconceivable that railroad could pay $250 million to the Federal Government. So to the extent one accepts that as a theory, it applies equally to all sales. It applies as much to Morgan Stanley as it does to NS. It is an argument for not to sell it but it is just not realistic to assume that Conrail is going to pay us a $1 billion in dividends over the next four years.

On the tax, and incidentally, I have to add that they did not discount those to net present value figures.

On the tax end of it, the Treasury Department did a complete analysis of the tax implications of this sale. Their analysis, and I think it is a very sound one, is at odds with the CBO analysis.

They say, that under existing tax law, with the diminimus exception in place, which the Secretary has said that she would support, there is about an $83 million difference between the stand-alone Morgan Stanley/Conrail and Norfolk Southern/Conrail. That difference does not come from tax benefits that Norfolk Southern acquires in the sale.

It comes from new investments made by Norfolk Southern after the date of sale. They can simply use the tax benefits sooner because they are more profitable.

However, the report also makes two other points that the Committee ought to bear in mind. One of them is that it is under existing tax law. Now, under the tax reform plan that the President originally proposed, that difference diminishes, if not disappears. In fact, our preliminary estimates show that it drops below zero.

The House version is certainly less favorable to business than the President's proposal and I think that those are the two parameters and that difference disappears entirely under either of those two tax bills, we believe, although that is our estimate. Treasury has said that it diminishes substantially if not disappears.

Now, finally, you have to recognize that a stand-alone Conrail can duplicate exactly the same tax benefits that Norfolk Southern gets very easily. The only difference comes about for two reasons. One, Norfolk Southern has more capital investment than Morgan Stanley would make and that is good. We want that. We are willing to accept that consequence.

Secondly, because they are more profitable they can use the tax benefit sooner. All that Conrail would have to do is to go out and do a leveraged purchase of a bookstore, any profitable enterprise, hold it as a subsidiary and then use their losses to shelter their profits. And you get exactly the same result. They are rational businessmen, so one would have to assume that they would do that and the Treasury made exactly that same point in its tax analysis.

So the bottom line is that the $1 billion loss of interest and dividend payments is true in theory because that is what the financing agreements pay but that does not mean that they can pay it and they obviously cannot.

On the $500 million taxes, I cite you back to the Treasury study. I think it is very persuasive.

Mr. LEHMAN. Please supply for the record, a detailed critique of the CBO analysis.

[The information follows:]

66a

FRA'S RESPONSE TO CBO'S ANALYSIS OF S.638

1. Background

On June 6, 1985, CBO submitted a letter response to the Chairman of the Senate Committee on Commerce, Science and Transportation which reviewed S.638, the Conrail Sale Amendments of 1985, as requested by the Committee April 30, 1985. Essentially, this bill provides for the transfer of Conrail to the Norfolk Southern and cancellation of the Federal Government's interest in Conrail debt and preferred stock. CBO noted its estimate of the budget impacts of S.638 through fiscal year 1990 was prepared as required by Section 403 of the Congressional Budget Act of 1974.

On January 23, 1986, Treasury released a major tax revenue study of the effects of selling Conrail to Norfolk Southern. It concluded that the sale to Norfolk Southern would result in a present value loss of $125 million for the 1986-1990 budget period and is discussed in greater detail below.

On February 26, 1986, the Congressional Budget Office released an analysis of the FY 1987 "baseline" budget assumptions which concludes that while the Government would receive $1.25 billion upon sale of its stock interest in Conrail, the Government would lose approximately $1.0 billion* in interest and dividend payments from Conrail and $0.5 billion in tax revenues over the 1987-1991 period.

II. CBO Assumptions

CBO assumed that the United States continues to hold the Conrail common stock, labor protection payments continue to be made by the Federal Government, Conrail does not pay State or Federal taxes, and interests on the debentures and dividends on the preferred stock are paid to the Government, according to the 1979 financing agreement between Conrail and USRA. The latest update basically continues the same assumptions except for the time period covered and revenue estimates.

III. FRA Response

A. Overview

While CBO indicates its original analysis was prepared as required by Section 403 of the Congressional Budget Act of 1974, we find CBO's estimates are seriously flawed in several critical areas:

---

* Our understanding from CBO staff is that their estimate assumes average annual payments of $251.5 million, starting in FY 1988.

- CBO assumed the worst case scenario in terms of tax impact despite Treasury's statements to the contrary.

- CBO ignored the time value of money making net benefit comparisons misleading.

- The report ignores significant benefits associated with a Norfolk Southern purchase in terms of shipper and community impacts, transportation efficiences, carrier viability and job stability in contrast to a Federally-owned Conrail.

- The CBO assumptions, in the absence of a sale, that Conrail would continue to pay no State income taxes or labor protection payments, result in a substantial overstatement of Conrail's net income from which dividend and interest projections are determined and are inconsistent with the intent of NERSA.

- The CBO study is absent any type of financial impact assessment from payment of interest and dividends to the Federal Government on Conrail's viability.

B. Analysis

1. Sale Receipts

CBO latest analysis incorrectly estimates that the Government would receive $1.25 billion upon sale. The Norfolk Southern Corporation has agreed to pay the Government $1.2 billion plus Conrail cash in excess of $800 million. Since Conrail has recently stated its year end 1986 cash balances would top $1 billion, one could speculate that more, not less, excess cash would be received. The Norfolk Southern Corporation also has agreed to surrender over $2 billion in accumulated net operating losses and investment tax credits of Conrail. Norfolk Southern also has agreed to be bound post-sale by public interest protective covenants, which represent direct value of considerable significance.

2. Interest and Dividend Payments

CBO incorrectly estimates that Conrail could pay the Government $1 billion in interest and dividends between FY 1988 and 1991. While Conrail's financing agreements with the Federal Government contemplate payments to the Government

66c

beginning in FY 1988 (depending upon earnings), the provisions of those agreements bear no relation to Conrail's ability to perform. In 1985, Conrail was only able to increase its cash by $64 million, and the company has already had very large cash outflows in 1986. Neither Morgan Stanley nor even the most optimistic forecast has projected $250 million annual cash availability over any of the next four years, and Conrail obviously could not make the $250 million annual payments estimated by CBO without deferring maintenance, depleting its cash resources, or selling assets or engaging in other forms of disinvestment.

3. Revenue Differential

CBO incorrectly estimates that the sale of Conrail to Norfolk Southern would cause a tax revenue loss of $100 million a year, totalling $0.5 billion for the FY 1987-1991 projection period. The failings of the CBO estimates can be seen clearly in the Treasury Department's detailed analysis of this issue, which was provided to the Senate on January 23, 1986, before the Senate approved the Norfolk Southern sale bill. In their report, the Treasury concluded that the nominal revenue differential for the FY 1986-1990 period would average $34.8 million annually (totalling $174 million), with a total present value of $125 million. Further, the Treasury Department concluded that the total present value revenue loss would be reduced to $83 million if legislation is adopted which would deny to Norfolk Southern the benefit of tax consolidation to the extent Conrail incurs tax losses attributable to the depreciation of its existing assets. Secretary Dole has already stated that the Administration would not object to such a provision.

The Treasury expressly noted that its estimate (like the CBO estimate) is based on current tax law. The Treasury concluded that enactment of the President's tax reform proposal would "substantially reduce or eliminate the excess tax benefits generated by Conrail over the period of the revenue estimate." The House version of the tax bill, with its more stringent treatment of depreciation, would likely eliminate the differential altogether.

The Treasury study also recognized that its estimates may overstate the revenue difference between Norfolk Southern and a stand-alone Conrail, since the management of a stand-alone Conrail could easily take actions that would reduce or eliminate any differential between the two plans. Such actions, for example, include: Conrail's practice of passing its tax benefits to third parties through leasing and other devices, which permits Conrail beneficial pricing and interest ratio on debt used to finance such deals; and, Conrail could change its current structure (upon which Treasury's analysis is based) and acquire a profit-making subsidiary to absorb Conrail's unusable tax benefits.

Finally, even under present law, it is important to note that the extra benefits generated by a Norfolk Southern owned Conrail primarily result from new investments made by Norfolk Southern after the date of purchase. Norfolk Southern voluntarily forfeits all of Conrail's accumulated net operating loss and investment tax credit carryforwards, so it does not draw tax benefit from past Government investment.

4. Present Value Determination

The figures cited by CBO are gross totals for a five-year period, not net present values. A Conrail dollar received next year or five years from now is not as valuable as a dollar received today. The CBO figures need to be discounted to determine their actual present value (which CBO refused to do when the Chairman of the Senate Commerce Committee requested this information last year), since the payment from the Norfolk Southern Corporation would be received at the start of the projection period, i.e., at the time of settlement following Congressional approval of the sale.

5. Consistency with NERSA

The bulk of the "loss" attributed to the Norfolk Southern acquisition of Conrail by CBO actually would apply to all options for selling Conrail, since the alleged loss is based upon an implicit argument that the Government should retain ownership of Conrail, rather than selling it. This argument is inconsistent with the direction of Congress in the Northeast Rail Service Act of 1981 (NERSA), and with the recent action of the Senate in approving the sale to the Norfolk Southern Corporation. Further, the CBO report ignores the potential downside risk to the Government and the taxpayers that, absent a sale to a strong parent which would bring new traffic and revenue to Conrail, the public investment in the company will be jeopardized should Conrail continue its lengthy history of severe losses of traffic.

66c

IV. Conclusion

The CBO analysis is seriously flawed because of its lack of comparative analysis to other sales options, its use of status quo assumptions regarding Conrail's future inconsistent with the intent of NERSA, its failure to assess Conrail's financial ability to pay interest and dividends, use of tax offsets far in excess of Treasury's estimates, and its disregard of present value calculations thus making any comparison misleading.

Were Conrail required to pay dividend and interest to the Federal Government the result would be substantial negative cash flows. An estimate of Conrail's cash flow over the same four-year period (1988-1991) that CBO calculates dividend and interest payments would be paid, reveals cash flows totalling about $532* million offset by $923 million in required dividend and interest payments. This would result in an incredible cash loss of $391 million over the four-year period.

The imposition of mandatory dividend and interest payments as contemplated by CBO would place Conrail in a negative cash flow posture for years to come and force management to implement radical changes to stem the severe cash drain. Management action likely to offset the cash drain would required drastic cost reduction efforts including additional labor separations, deferral of maintenance and reduced capital expenditures. Increases in rates or reduction in service would also result. The consequences of such actions would be severe adverse impacts on both the quality and quantity of service provided on labor stability and on regional development. The threat of insolvency becomes a real threat under the CBO scenario.

---

* FRA estimated cash flow based on Conrail's June 7, 1985, Five-Year Outlook (1985-1989) and assumes, in the absence of better data, a continuation of Conrail's projected 1989 levels in 1990 and 1991.

VALIDITY OF CBO ANALYSIS

Mr. **Lehman**. If the CBO analysis is indeed found to be valid, would you still recommend that we proceed with the sale to Norfolk Southern?

Mr. **Riley**. Well, it is hard to answer that hypothetically, because their analysis is valid if you accept the assumptions but the assumptions that they were given are not real world assumptions.

But if it were found to be valid, that would argue for keeping the railroad forever and that is not fair for other reasons. Because the railroad has a whole series of special advantages that, in effect, make it an unfair competitor with others who operate in its territory and it is very hard for me to tell you that I think that Government should keep a railroad forever even if it is profitable.

I understand what you are saying, but it is hard for me to accept the hypothesis because I feel so strongly that it is not valid.

Mr. **Lehman**. It is the old thing that "my mind is made up so"——

Mr. **Riley**. No, it is not that. What I am really saying is that I have studied the basics. When the CBO numbers came in, I did take a look at them and I took a look at them with an open mind. I mean it did get my attention but when I looked through the assumptions, what I found out was that the assumptions were not real.

You can send Conrail a bill for $250 million but it does not mean that they can pay it.

P&LE AND GUILFORD VIABILITY

Mr. **Lehman**. I will not pursue the CBO analysis because we will probably have to deal with that at some later date.

Of course, a major consideration in judging your legislation is whether Norfolk Southern's proposed divestitures to the smaller regional railroads such as the Guilford and the Pittsburgh and Lake Erie will provide for viable long-term railroad competition in certain areas identified by the Justice Department.

I believe negotiations are farthest along with the GTI and P&LE, both of which are considered financially "marginal" by most analysts.

If you believe a stand-alone Conrail would have a hard time making it over the long run, why do you think that these other railroads will survive and prosper if Conrail is sold to the Norfolk Southern?

Now, Mr. Durbin has partially asked you that question, but please expand on this point.

Mr. **Riley**. I think that most of the points that I made on that were the ones that I made to Mr. Durbin, and I would just add that I think that GTI will survive whether the sale goes through or not. I do not think that P&LE has any real chance of surviving with a stand-alone Conrail because Conrail has cut off all of its eastern gateways and Conrail must do that to survive.

Mr. **Lehman**. If Conrail is not sold?

Mr. **Riley**. That is right. I think P&LE probably will not survive if Conrail is not sold. P&LE has got to be restructured to survive, and we have restructured it because I want to preserve competition in that area.

Mr. **Lehman**. That is the one that goes through the Buffalo gateway?

Mr. **Riley**. No, the Buffalo gateway is Guilford. P&LE is a steel carrying railroad that operates in a 556 mile radius of Pittsburgh. And what happened to the P&LE was two-fold. When Conrail ran into this financial squeeze that it is in today, Conrail had no alternative but to aggressively close gateways and shut down routes and try to steal as much traffic as it could.

Also, mergers in the steel industry changed P&LE's shipping patterns. It had an inter-plant haulage problem. It would serve a steel company but it could no longer connect the two plants because of mergers and it lost the business. When we sat down to decide how to preserve 1,000 jobs on that railroad, we redesigned the system to get them from plant to plant and to give them better connections to places like Toledo and Cleveland.

PRELIMINARY APPROVAL OF DIVESTITURE PLAN

Mr. **Lehman**. I understand.

Of course, the Justice Department's Anti-trust Division has been analyzing Norfolk Southern's divestiture plans against the competitive standards of the Clayton Act.

At one point last fall, they apparently had major problems with the proposed divestiture to Guilford and the Pittsburgh and Lake Erie. The Assistant Attorney General for Antitrust wrote Secretary Dole on September 25, 1985, as follows: "Based on the information we have obtained to date—it does not appear that the proposed divestiture will establish a rail carrier in the designated corridor capable of providing long-term, viable competitive service."

We understand that the Norfolk Southern immediately submitted another divestiture plan that was given "preliminary approval" by the Antitrust Division in November.

What did Norfolk Southern change in its divestiture plan to turn around the Justice Department?

Mr. **Riley**. A number of things and I will submit them for the record, but the biggest one, the most important one is that the Justice Department required that Guilford and Pittsburgh and Lake Erie, operate not on their own track, but that Guilford, in particular, be given access to the best NS track between New York and Chicago and their other connections in Chicago and that they go in on track. That was the biggest change. Once Guilford was put on the best route between the eastern ports and the midwestern gateways, of Chicago and St. Louis, it was clear that they would be competitive in the time sense and it was clear that they would be going to the areas where the substantial traffic concentrations were.

That was the defect that Justice found in the first plan. I would have to be honest with you and tell you that I think that Justice has been extremely strict on this one and I am not fully in agreement that they needed to go as far as they went. But they did go that far and NS did what it had to do.

In addition, Guilford went in on trackage rights as opposed to going in through purchase, which substantially changed their cash outlays. And finally, the reciprocal switching mandates which I described earlier and the 50/50 split of switching were added, both of which substantially improved the economics of the carriers.

It is an access issue. Also one more point that is worth making, divestitures were added that brought Guilford as a competing carrier into Wayne and Washtenaw Counties in Michigan which had been a defect of the original plan.

Mr. **Lehman**. Talking about these two small lines, Guilford and P&LE, would these railroads be able to pick up and deliver to shipping points located on these "best lines"?

Mr. **Riley**. Yes, absolutely. They have to have full access. You raise a good point. That was another problem that Justice had with one of the earlier drafts of the agreement, that they did not have the full access to the shippers on those lines and they required that they be given access.

NS DIVESTITURE PLAN

Mr. **Lehman**. Please provide for the record, a summary of Norfolk Southern's latest divestiture plan.

[The information follows:]

A total of 2,242 miles of Norfolk Southern (NS) and Conrail (CR) rail lines are either sold outright, conveyed through lease transfer, or access given through perpetual trackage rights in order to expand Guilford from a New England carrier to a direct single-line carrier to the Chicago and St. Louis gateways and to bring Pittsburgh and Lake Erie Railroad (PLE) into the Ft. Wayne, Toledo, Cleveland and Southeast Ohio markets. Guilford will be the divestee of 1,553 miles and PLE will be the divestee of 689 as follows:

	NS	CR	Total
Conveyed—PLE	511.4	3.9	515.3
Conveyed—GTI	190.3	274.0	464.3
Total conveyed	701.7	277.9	979.6
Lease transfer—PLE	122.6	0	122.6
Lease transfer—GTI	0	0	0
Total lease transfer	122.6	0	122.6
Trackage rights—PLE	0	51.1	51.1
Trackage rights—GTI	146.5	942.2	1,088.7
Total trackage rights	146.5	993.3	1,139.8
Total divested—PLE	634.0	55.0	689.0
Total divested—GTI	336.8	1,216.2	1,553.0
Grand total divested	970.8	1,271.2	2,242.0

JUSTICE DEPARTMENT RELIANCE OF EXPERT ADVICE

Mr. **Lehman**. I believe the Justice Department hired an expert consultant, R.L. Banks, to assist them in reviewing these divestiture plans. It was reported that this consultant found significant short-comings in the previous Norfolk Southern plan that caused Justice to turn "thumbs down" on September 25.

Yet we understand that Justice did not rely on any expert analysis from this consultant when "preliminary approval" was given to Norfolk Southern's revised plan in November. Why did the Justice Department express approval of this plan before it had received advice from its experts?

Mr. RILEY. I do not want to put words in Assistant Secretary Ginsberg's mouth and he answered this precise question when he testified over in the Senate Judiciary Committee. What I would like to do on that is to submit his testimony for the record. Basically you will see that the Banks study studied one piece of a larger issue. And they have affirmed the correctness of the design of the map and that the Banks study is going back to confirm certain aspects of that.

But I would yield my summary comments to Mr. Ginsberg's and I will submit that to the record for you.

[The information follows:]

Mr. Ginsburg's statement before the Senate Committee on the Judiciary on November 21, 1985, is submitted for the record. Beginning on page 3, Mr. Ginsburg explains the developments that led to the Department of Justice's (DOJ) preliminary approval following his September 25 letter to Secretary Dole. I am also submitting for the record Mr. Ginsburg's answer to Senator Specter's question as to whether the Senate ought to postpone voting on the issue until DOJ's consultant completes his analysis.

73b

STATEMENT OF

DOUGLAS H. GINSBURG
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

PROPOSED SALE OF
CONSOLIDATED RAIL CORPORATION
TO NORFOLK SOUTHERN CORPORATION

ON

NOVEMBER 21, 1985

73c

Mr. Chairman and members of the Committee:

It is a pleasure to be here today before this Committee to discuss the Department of Transportation's proposal to sell the federal government's 85 percent share of Consolidated Rail Corporation (Conrail) to Norfolk Southern Corporation (NS). The Justice Department's role in this proposed sale began fourteen months ago when Secretary Dole requested that the Antitrust Division conduct an analysis of the sale's likely effects on competition. The Antitrust Division then conducted an intensive four-month study and advised Secretary Dole in January 1985, that NS' acquisition of Conrail would be anticompetitive unless there was a substantial divestiture of rail properties in a five-state area stretching from Illinois in the West to New York in the East.

The methodology that the Antitrust Division used in conducting this analysis is set forth in detail in a letter of January 29, 1985, sent to Secretary Dole by my predecessor as Assistant Attorney General for Antitrust, J. Paul McGrath. Although I was not with the Justice Department during the period when the Antitrust Division conducted that analysis, I am familiar with the approach that was taken and with the Division's employees who participated in the project. I am confident that the staff's analysis met the highest professional standards.

73J

As you know, the Justice Department's role in ~~the~~ proposed sale of Conrail has involved more than the competitive analysis we submitted to Secretary Dole in January. At the Antitrust Division's request, the Department of Transportation made any transfer of stock to NS contingent upon a finding by the Attorney General that NS has entered into divestiture agreements with one or more entities, other than CSX or any company controlled by CSX, that will provide long-term, viable, and competitive rail service in those rail corridors where substantial competition between Conrail and NS would otherwise be eliminated. NS has proposed to satisfy the divestiture condition by selling various rail properties and trackage rights to Pittsburgh and Lake Erie Railroad (P&LE) and to Guilford Transportation Industries (GTI), the parent corporation of the Maine Central, Boston and Maine, and Delaware and Hudson railroads.

NS' first divestiture proposal was presented to the Antitrust Division late this spring and details were provided to us throughout the summer. In order to help us evaluate the proposal, we obtained information on a variety of relevant issues from Conrail, NS, GTI, and P&LE; retained a well-respected transportation consultant, R. L. Banks and Associates, to prepare a preliminary report on the proposed divestiture; consulted with local and state government officials from the areas most directly affected by the

'73e

proposal; and travelled to Buffalo, Toledo, Canton, and Indianapolis to discuss the proposal with shippers, state and local government officials, and other concerned private parties in those cities.

Our analysis focused on five major aspects of the divestiture proposal: (1) the physical condition of the properties to be divested; (2) the proposed operating plans of P&LE and GTI; (3) the marketing plans and projections of P&LE and GTI; (4) the financial ability of GTI and P&LE to continue their existing rail services, to acquire the divestiture properties, and to pay for the necessary upgrading of the tracks and yards to be acquired under the divestiture agreements; and (5) the ability of the proposed operations of P&LE and GTI to remedy the competitive problems that we identified in our initial study for the Department of Transportation.

We concluded that the proposal was unacceptable and explained why in Appendix A to my September 25 letter to Secretary Dole. At almost the same time, NS announced a substantially modified divestiture proposal that substituted overhead trackage rights on the Conrail main line for the so-called "Streak of Rust" between Toledo and St. Louis. On a continuous basis from late September until early this week, representatives from the Division met with representatives of

'73 P

NS, GTI, and P&LE to explain our concerns about the proposal (for example, the fact that under the original trackage rights arrangement, GTI would have been unable to serve most local shippers from Toledo to East St. Louis). With each new modification, we pointed out the problems that remained. In our view it was necessary for the proposal to address all of our competitive concerns. As a result, the proposal that was finally put forward by NS is quite different and vastly superior to that originally put forward.

The new divestiture proposal appears to correct the defects of the earlier proposals. For example, in my September 25 letter I stated that under the initial divestiture proposal no significant service would be provided to Wayne or Washtenaw Counties, Michigan or to Blackford and Wabash Counties, Indiana. In contrast, the new proposal provides that GTI will have overhead trackage rights over the NS line from Detroit to Fort Wayne, Indiana with an interchange with the Ann Arbor at Milan, Michigan (to serve Washtenaw County) and local service trackage rights from Detroit to Toledo over the Conrail line. Both lines will give GTI direct access to Detroit's substantial traffic and the former will enable GTI to provide service between Detroit and Chicago over essentially the same route that NS uses today. The latter line will allow GTI to serve many major shippers on a competitive basis with NS/Conrail, and will enable GTI to

73y

provide direct service between Detroit and St. Louis. Other features of the new proposal provide the acquirors with lines of significantly higher quality than the earlier proposals. Moreover, all the problem counties designated in our January 29 and March 26 letters to Secretary Dole will be served by either (and in some cases both) GTI and P&LE. Thus, it appears that GTI and P&LE will have direct access to the vast majority of shippers whose problem revenues are reflected in the January 29 and March 26 letters.

In addition, while the September 25 divestiture plan provided for a maximum switching charge of $250 per car to be paid by GTI and P&LE to NS, a rate lower than that which NS and Conrail often charge each other, we were concerned that NS still proposed to be responsible for all of the switching along the divested lines, leaving GTI and P&LE dependent on the good faith of their major competitor to provide non-discriminatory treatment. We told NS that it would have to provide both behavioral and structural solutions for this potential problem. As a result, it modified its proposal in two significant ways.

First, the divestiture agreements will include an automatic penalty clause providing for liquidated damages if cars switched for GTI and P&LE are handled less favorably than cars that NS/Conrail switches for itself. Second, the agreement will guarantee switching parity between NS/Conrail

73 h

and GTI on the trackage rights lines. Under the terms of the agreement, GTI will have the option of providing the switching now provided by the Indianapolis Union Belt Railroad and by Conrail in two other areas. This means that if GTI so chooses -- in its complete, unilateral discretion -- GTI could switch approximately as many cars for NS/Conrail as NS/Conrail would switch for it. This would ensure parity between the railroads in the affected areas and thus the trackage rights arrangement would have the unprecedented value of creating, for the first time to my knowledge, truly contestable markets in the railroad industry.

Another area of concern to us was the possibility that Conrail or NS may have entered into long-term contracts with shippers that would foreclose GTI and P&LE competing for the business of important shippers along the lines covered by the divestiture. NS responded to this concern as well, agreeing to allow all coal contracts with more than two years and all other contracts with more than one year to run from the date of the divestiture to be open for solicitation by GTI and P&LE, provided that the contracts involve service over the divested lines. These modifications significantly enhance GTI's and P&LE's ability to provide the long-term, viable competition that the Division has required since its January 29 letter.

In short, the present proposal is a substantial improvement over the earlier plans, and it appears to resolve

'73;

our concerns. GTI and P&LE have indicated they intend to provide significant service to the shippers that otherwise would be adversely affected by the merger of Conrail and NS. What is even more significant than their intentions or their revenue projections, however, is the economic incentive and ability to provide competitive service to shippers throughout the corridor that the divestiture proposal provides GTI and P&LE. Regardless of whether they are carrying a particular shipper's goods immediately after the divestiture, the terms of the divestiture ensure that if NS/Conrail and/or CSX try to raise rates to anticompetitive levels, GTI and/or P&LE will be ablo to, and have an incentive to, provide alternative service at competitive rates. In other words, it appears to create long-term, viable and competitive service for affected shippers.

While it appears that the plan addresses our stated concerns, we intend to consult outside experts to help us to confirm that this proposal will create long-term, viable and competitive rail service. The expert who is hired will be asked to look at all aspects of the plan, both operational and financial, in detail in order to confirm the accuracy of the representations upon which we have based our conclusion.

We are currently working with the Department of Transportation to finalize the funding and timing of that study. While the outside consultant is analyzing the

73j

divestiture, our staff will discuss the competitive effects of the proposed divestiture with additional shippers, local governments, and other interested parties. Upon receipt and consideration of the report, the Department of Justice will be able to make a final determination as to whether it will approve the proposal.

Mr. Chairman, that concludes my prepared testimony. I will be happy to answer any questions from you or members of the Committee.

and go through it and analyse it and so on, but we would be talking about details, and that's what is left at this stage. The Phase II study that we intend to see conducted here by an outside consultant and the work that we intend to do ourselves and the informational demands that we are placing on the carriers are all in the nature of verifying details.

They have submitted a divestiture plan that's described rather fully in this joint memorandum of the three carriers, which runs with the appendices about 85 pages, and some additional supplements to that that have been distributed by the carriers. And our task now is to go out and verify all of the important elements of that.

If they tell us that the track or facilities in a certain location are good quality and in operating condition, we think an independent check should be made on that kind of representation.

SENATOR SPECTER. Mr. Ginsberg, why don't you wait for that independent check before you give any form of approval?

MR. GINSBERG: Well, we have given an approval to the structure of this transaction. We are not in a position to recommend that the sale be made or consummated until we do.

indeed, have that final check.

SENATOR SPECTER. Do you think the Senate ought to await your check on the representations made before we vote on the matter?

MR. GINSBERG. Well, Senator, of course the Senate will take its own counsel. But I certainly hope that the Senate will not defer this matter any further, for two reasons.

One, the Department of Justice routinely, and indeed with increasing frequency, is in the position of analyzing complex transactions, including divestiture proposals, for the purposes of antitrust analysis, and we do so on the basis of the trust that we've been given by the laws enacted by the Congress of the United States.

When we reach our conclusions, we announce them or act on them, if they require litigation. And we have not, in the past, been asked to come back to the Congress on each transaction we analyze for supervision about the way in which we're discharging our duties. So I hope that the Senate will, in light of the way in which we've operated in the past, without criticism in this regard, see fit to enable us to go about our work without having that vote held up until we dot all the i's and cross all the t's, secure in the knowledge

73m

that we will do so.

SENATOR SPECTER: Should the Senate have awaited your preliminary approval that you rendered on November 19th before voting?

MR. GINSBERG: I do not think it was necessary. I don't think we would have conducted ourselves in any manner differently.

But let me say that the cost of the Senate's waiting on this matter is not insubstantial. The parties are -- have been willing to invest resources in planning, but the uncertainties surrounding the ultimate doability, the consummation of this transaction, is certainly increased when it becomes a subject of political dispute and of controversy in the Senate. And I think that -- confident that the competitive concerns have been addressed and will be fully addressed in detail before any transaction is consummated, the Senate should remove that degree of uncertainty within its power by ratifying the transaction in principle.

SENATOR SPECTER: Mr. Ginsberg, are you representing that, if all these facts check out, that you're going to satisfy all of the objections which were raised by the R.L. Banks & Associates, Inc.?

73n

MR. GINSBERG: Well, we're going to satisfy all of the objections that we have ever held or raise, and we stated those in our three letters to Secretary Dole.

Now the Banks' report came in prior to the third letter, the September 25th letter, and the important reservations that we had about the transaction, which are stated in the September 25th letter, were confirmed by the Banks' report, in my view, and the current deal addresses those.

SENATOR SPECTER: Have you felt under any pressure to conclude at least a preliminary approval by this time, some time in advance of the end of 1985?

MR. GINSBERG: No, Senator, I have not felt pressured either to complete the process by any given date or to conduct it in any particular way. But I do think that the initial scheduling of a hearing for this afternoon was a helpful element, in that it provided some additional incentive, I think, to the carriers to meet our objections.

SENATOR SPECTER: Does the absence of a hearing this afternoon have any effect on that?

MR. GINSBERG: Well, the objections have been met. I trust that the parties will not try to withdraw their

FINALIZATION OF DIVESTITURE

Mr. LEHMAN. Is it true that the latest divestiture plan had not even been finalized between the respective railroads when the Justice Department gave tentative approval in November?

Mr. RILEY. No. Agreement had been reached on the shape of the redrawn map and there were some details on interchange that had not been finalized, but they were not material to the final outcome.

CAPITAL NEEDS ON DIVESTED LINES

Mr. LEHMAN. What would be the capital requirements of the GTI and the P&LE to purchase and rehabilitate the lines they would acquire from Norfolk Southern, and how firm are their plans to finance these improvements?

Mr. RILEY. Well, the GTI does not have a rehabilitation need, because the GTI is running on trackage rights over the best Norfolk Southern lines. The dollars that they pay that will be allocated to track maintenance will be a part of their trackage rights fees, which will vary with volume.

Now, the Pittsburgh and Lake Erie is acquiring some line and they will have to do some capital investment on the line.

I would like to ask my Deputy Administrator, Chris Rooney, if the Committee would like, to comment on the status of the Pittsburgh and Lake Erie's financing.

Mr. ROONEY. Mr. Chairman, Pittsburgh and Lake Erie has received an indication from the banking firm of Dillon Reed & Company that they will assist in financing the requirements for the Pittsburgh and Lake Erie which totaled up to about $18 million, I believe, in the immediate sense for an acquisition and then some additional funds for rehabilitation.

And in general terms, these acquisitions and rehabilitation sums are very appropriate to the amount of trackage being acquired and present what these bankers judge to be reasonsable economic returns on the funds invested.

Mr. LEHMAN. How will it be underwritten? Can they finance it?

Mr. ROONEY. They have every expectation of being able to do so and certainly the bankers have indicated that they believe it can be done.

Mr. RILEY. And of course, the closing of the deal is conditioned upon that financing being actualized. The way the contract is written and the way the Senate bill is passed, the transaction cannot close until Justice gets final antitrust approval and all of the conditions of that approval are met.

P&LE VIABILITY

Mr. LEHMAN. According to the USRA, the P&LE's existing capital structure raises questions about their long-term future. The USRA's December 3, 1985 report to Congressman Florio reads in part, as follows: "P&LE's existing capital structure poses an enormous barrier to any reasonable expectation of its long-term viability. It seems unlikely that P&LE can meet the Justice Department's long-term viability criteria without further changes in its capital structure. For a divestiture alone to insure P&LE's viability, the return on new investment for the divestiture, which itself increases P&LE financial risk even further, will have to be more substantial than may be generally understood."

That does not sound like a very bright future. Would you comment on (1), the P&LE's current financial condition, and (2), how confident you are that the Norfolk Southern divestiture plan will solve the P&LE's financial problem?

You have touched on that, but please expand on it.

Mr. **Rooney**. Let me expand on that briefly, here, Mr. Chairman. I will be happy to write an essay on that for the record, if you would like.

P&LE was undergoing a kind of an out-of-court reorganization at the point in time when that report was penned. The result of that recapitalization effort was to make the burden of its debt a much more livable, and a very practical kind of a burden to meet. In fact we have been keeping tabs on the Pittsburgh and Lake Erie's finances on a regular basis, and only a short couple of weeks ago they reported that they were not only making payments quite on time, but generating the adequate cash balances.

The divestitures would add a very considerable amount to the system. They would add something like the same amount of traffic that now exists on the whole P&LE system. So you can see that the divestitures are a very significant increment of business and give them a very robust kind of an injection of new business and profits.

And that is an important aspect here. We have never claimed that the Pittsburgh and Lake Erie is going to be able to carry on, as it stands today, for the long-term. It may squeak by. But this is a very substantial net improvement that has been proposed here.

Mr. **Riley**. And I have to add again, that the changes that we have made in the Guilford is the competitive fix. The changes we have made in the Pittsburgh and Lake Erie were to address a very real problem that had to be addressed, no matter how this railroad was sold, and in fact even if the railroad were not sold. The Pittsburgh and Lake Erie problem is there in any scenario.

The advantage that a sale to Norfolk Southern gives you is that you have lines you can divest to it, which you do not have in any other scenario, so you can address the problem more effectively in a Norfolk Southern sale.

Mr. **Lehman**. Well, this divestiture by Norfolk Southern, you say is going to improve the situation of P&LE. Just how confident are you that this will really solve that problem?

Mr. **Rooney**. Well, there are a couple of sidelights that I can give you on that, Mr. Chairman.

The first is that we ran some studies ourselves on the traffic that existed on those lines. The lines that the Pittsburgh and Lake Erie would acquire are not defunct railroad lines. They are active, highly trafficked lines today, and they handle traffic which emanates from exactly the same customers, if not the customers themselves, certainly the types of customers—coal, steel, steel mill supplies, and so on—that the Pittsburgh and Lake Erie currently deals with.

So these are not unknowns about which they must speculate. It is not as if they were suddenly going to be thrust into competition for perishable fruits and vegetables traffic, or something about which they know nothing.

They have a good background of information about the shippers and the products that are moving there, and in many instances, they handle either the origin or the termination movement for some of these shippers today.

P&LE STOCK

Mr. **Lehman**. Is the P&LE stock on the New York Stock Exchange?

Mr. **Rooney**. No, sir, it is not. It is relatively closely-held stock.

Mr. **Lehman**. It is over-the-counter, as far as you know?

Mr. **Rooney**. No, no, it is not. It is not a public security at all.

Mr. **Lehman**. It is a privately-held company?

Mr. **Rooney**. Right.

ENSURING COMPETITION

Mr. **Lehman**. Hypothetically speaking, if it were to be shown conclusively that the GTI and the P&LE could not provide long-term, viable and competitive rail service to the areas identified by the Justice Department, would you recommend that the Norfolk Southern proposal be turned down?

Mr. **Riley**. Well, the Secretary would have no choice, since the agreement itself, and the Senate legislation is specific in saying that the deal cannot close until Justice has affirmed that they are viable long-term competitors, but you would not turn the deal down.

What she would simply do is sell the divestitures to another carrier, or perhaps create one, a new one to operate on the divested lines.

Mr. **Lehman**. But some form of competition?

Mr. **Riley**. Yes.

STATUS OF ROUTE PROTECTION NEGOTIATIONS

Mr. **Lehman**. I believe the Norfolk Southern is also offering route protection concessions to the Illinois Central Gulf, Chicago and North Western, Soo/Milwaukee, Kansas City Southern, and the Iowa Interstate.

Would you briefly discuss what you know about the status of negotiations for each of these railroads.

Mr. **Riley**. The Norfolk Southern has offered all of the bridge carriers and the small competing carriers in the Midwest gateway protection agreements that would protect the status quo, because it has never been their desire to build the economics of the sale off diversions from those carriers.

Now, the Soo/Milwaukee has entered into an agreement with the Norfolk Southern. The Kansas City Southern has entered into an agreement and in fact is affirmatively supporting the sale.

The Iowa Interstate has entered into an agreement with the Norfolk Southern. The Illinois Central Gulf and Chicago and North Western have not, and I must say to the committee that I have watched both of those negotiations, and I do not believe they have foundered on any issue relative to the merger.

There are what one might term other agenda issues in both of those negotiations. With the ICG I am convinced it is a demand that the Federal government forgive the ICG's debts which run to about $152 million, which we are not about to do.

I will submit for the record a proposal Norfolk Southern gave to the ICG protecting all of their gateways out to the year 2000. That is better than they have today, by any stretch.

[CLERK'S NOTE.—FRA has subsequently informed the Committee that Norfolk Southern has refused to provide this information.]

In addition, since Guilford runs on the same line that Conrail now runs on, at the key ICG gateway at Effingham, where today, the ICG is totally dependent on Conrail at that gateway, now they have got two. They have got Conrail and Guilford, and they can bid them off against one another, and it just goes to make the point that the problem there is not a competitive one.

There is a similar issue, not a dead issue, in the Chicago and North Western that I would frankly prefer not to refer to on the public record.

GRAND TRUNK NEGOTIATIONS

Mr. LEHMAN. Would you include the Grand Trunk in that same report?

Mr. RILEY. I have read, but am not privy to the negotiations, that there are discussions going on with the Grand Trunk and the NS but I cannot shed any light on that to the committee.

TRAFFIC DIVERSION ESTIMATES

Mr. LEHMAN. I suspect that the business of predicting traffic diversions resulting from railroad mergers is more "art" than "science." Last August, the ICC staff estimated that the total freight revenue that ten other railroads would lose to a combined Norfolk Southern/Conrail would be in the neighborhood of $289 million to $320 million annually.

The FRA claims such diversions would be only in the range of $185 million to $264 million.

That is 20 to 55 percent lower than the ICC estimates. Although we know you stand by your estimates, hypothetically speaking, would you still recommend a Norfolk Southern/Conrail merger if the diversions were in fact as high as what the ICC staff has predicted?

If so, what level of traffic diversion would cause you to change your mind about this merger?

Mr. RILEY. The answer is yes, because even at the ICC's numbers, that is not going to put a railroad out of business, but secondly, and I think this is the "real" answer: Whatever numbers one chooses for diversion estimates, the agreements that the Norfolk Southern has offered to the smaller carriers resolve this problem.

And so whatever numbers you believe the diversions would be at, absent an agreement, with the agreements that have been signed by the Soo, and the Kansas City Southern, have been offered to the other railroads, you can virtually eliminate those diversions no matter what the number is, and I would hope the railroads would accept them.

If not, they can probably be legislated into law, and that solves that problem. So whatever the gross figure is, those gateway agreements give you an acceptable net figure by either scenario.

Mr. LEHMAN. Mr. Coughlin, would you like to take up a few questions?

CONRAIL STAND ALONE VIABILITY

Mr. COUGHLIN. Thank you, Mr. Chairman. I suppose we can go on talking about Conrail forever.

Mr. RILEY. If I never see another blue train it is going to be too soon. I will not put a Conrail engine on my Lionel, not at all, just because I am tired of seeing them. The same goes for Norfolk Southern.

Mr. COUGHLIN. Let me ask one other question on Conrail, if I might. Stanley Crane runs a pretty good railroad.

Mr. RILEY. Yes.

Mr. COUGHLIN. Why would he be convinced that Conrail can go on a stand-it-alone basis?

Mr. RILEY. I think that Stanley Crane does run a very good railroad, but Conrail is convinced their railroad can go it alone, on a stand-alone basis, so long as they have continued freedom to shrink down to a basic core system that is much smaller than the railroad is today.

Conrail's own estimates show the loss of about 1500 employees a year, and they show a shrinkage of a considerable number of lines as we go out into the future.

I am not sure that I would argue with the conclusion that that could be done. I am just saying that I do not think it should be done. If you can avoid inflicting that kind of pain on communities and employees, you should do it, and we can fix the problems that have led to that.

Almost any railroad can run "stand-alone" if you are willing to shrink it enough, abandon enough lines, and lay off enough employees, but that does not mean that is the best public policy answer.

CONRAIL FUTURE ABANDONMENTS

Mr. COUGHLIN. Would—and I guess maybe this is hypothetical—would Stanley Crane agree with your analysis that there will be less shrinkage under Norfolk Southern than there would be on a "stand-alone" Conrail?

Mr. RILEY. Oh, I think in his heart he knows I am right, but I would say this: As you no doubt know—and this is maybe illustrative of the problem—before the Conrail/Norfolk Southern deal was recommended, the president of CSX Corporation wrote Secretary Dole two long letters saying that Conrail cannot stand alone, there is going to be tremendous line loss if it stands alone.

That in fact he specifically said, that ultimately, the East can only support two railroads and that Conrail will collapse.

Now, after the Secretary recommended the sale to Norfolk Southern, that same individual has been the leading financier of the Morgan Stanley effort, arguing that Conrail can stand alone. but I do think that the statements that he made earlier, before a legitimate, frankly, from his perspective, reason for opposing the sale arose, represent I think his actual views, and I think they represent reality, and in fact I have to say that the sentiments expressed in his letter had a lot of impact on me, and had a lot of impact on all of us who were analyzing this in the Department at that time, because we became convinced that his views were correct.

But I think that just illustrates the kind of problems that you have. We understood, when we made this recommendation, that CSX, which is the dominant railroad in the East today at 27,000 miles, would have to oppose the sale. They are Hertz; NS is Avis. Those positions reverse, and Hertz, anyone is going to fight that kind of thing, and we understand it, but it does not mean that it is good public policy.

Mr. **Coughlin**. Mr. Chairman, we will be, I guess, pursuing the Conrail question in other forums as well. Shall I proceed to rail regulation?

Mr. **Riley**. I feel sorry for both of us on that count.

Mr. **Coughlin**. Shall I proceed with rail regulations?

Mr. **Lehman**. Yes.

CONRAIL RESPONSE TO FRA

[Clerk's note.—The following letter was received in response to the issues raised by the Federal Railroad Administrator.]

CONRAIL

10

WILLIAM B. NEWMAN, JR.
VICE PRESIDENT AND
WASHINGTON COUNSEL

April 3, 1986

The Honorable Jamie L. Whitten
Chairman
Committee on Appropriations
H-218 Capitol Building
Washington, D.C. 20515

Dear Chairman Whitten:

Mr. John Riley's recent presentation before the House Appropriations Subcommittee on Transportation on March 13 contained a number of significant misstatements or distortions relating to Conrail. The following comments respond to those statements.

1) Conrail's market share in the eastern region has declined 3.6% annually for the last 20 years.

   The overall long-term market share for Conrail and its predecessor railroads indicate an average decline of 0.8% annually. In 1964 Conrail's Market share was 35.7% after allowing for duplicate and diverted traffic resulting from the consolidation of predecessor railroads making up the present date Conrail. (3.6% annual decline would require a 64.0% market share in 1964 - almost double the actual share). Conrail's downward traffic trend appears arrested from about the time of deregulation legislation under NERSA. Since that time, Conrail's traffic has stabilized between 179 and 193 million tons per year and has somewhat improved to a greater extent than other Eastern railroads. (Attachment A) Since the 1981-1982 period and the passage of the Northeast Rail Service Act, Conrail's originated carloads have increased to a greater extent than the entire railroad industry including the railroads in the East.

2) Conrail's net income does not take into account capital investments.

   Conrail and all other businesses following general accounting convention are not permitted to include capital costs in the net income statement (except as to depreciation.)

CONSOLIDATED RAIL CORPORATION 950 L'ENFANT PLAZA SOUTH, S.W. WASHINGTON, D.C. 20024

3) Conrail made $9 million in January, but our cash dropped $35 million because of necessary capital investments.

Conrail's cash flow in January 1986 was down $35 million, exactly as budgeted and results from the customarily historical pattern of payment requirements which typically are quite heavy in January for equipment debt installments, inventory build up and lower collections from shippers because of the winter and holiday season. Conrail's cash at the end of the first quarter increased $27 million, slightly better than budget. For the year, Conrail's 1986 budget indicates an increase in cash of $169 million.

4) Conrail has laid off 2600 over the last 16 months.

Conrail's reduction in employees results partly through agreement with the UTU which has provided for severance of approximately 900 unneeded brakemen and firemen employees In addition, the decrease reflected improvement in operating efficiencies because of benefits from capital expenditures, technology or just finding better operating ways to do things.

5) Conrail has sold $90 million or property over the last 16 months.

Every year Conrail sells real estate not needed in its operation. These sales result from abandonment proceedings provided by NERSA and in addition, the cash flow includes sales of salvage or scrap materials that have become available through capital improvements and replacement programs. All railroad supplement cash flow with these kinds of activities. Similar proceeds are typically higher for other railroads which also benefit from dividend income from diversified investments. (Attachments B & C)

6) Conrail asked FRA for $12 million in Title VII funds in January.

Under the railroad legislation, severance of protected employees is provided through the U.S. Government. The $12 million reference relates to severance previously paid by Conrail and for which reimbursement was received in December 1985, per the legislation.

7) Conrail has estimated that to stay even over the next year, we must lay off 1600 employees and sell $50 million in property.

A reduction at 1600 employees in 1986 is in Conrail's Budgeted plan for the year and includes all forms of employee changes by reason of capital programs, severance-buyout arrangements with the unions and other improvement goals.

The budgeted cash flow for 1986 provides for positive increase of $169 million in cash after allowing for capital and debt requirements. The real estate proceeds stated in the budget for 1986 is $45 million, the lowest level in many years.

8) Conrail made $400 million in 1985 but had a negative cash flow.

In 1985 Conrail did not have a negative cash flow, but did have an increase in cash flow of $64 million, despite the fact that cash expenditures in 1985 included $69 million of wage payments for the previous year 1984 and despite the fact that the ICC allowed for an extension of shipper credit causing a one-time negative impact on cash of $38 million.

9) Conrail's traffic declined last year at a rate far in excess of the history rate of decline.

Our 1985 volume decline of 3.5% compares with a rail industry decline of 4.1 percent. The 1985 decline reflected general economic conditions and relative to the railroad industry Conrail's position actually improved. (Attachment D)

10) Conrail's projection of cash flow was off by 100%.

In the year 1985, Conrail's cash flow reflected an increase of $64 million. This amount of improvement was $110 million less than anticipated in the budget for 1985; however, the deviation resulted from the management decision to increase capital expenditures by $43 million in 1985 compared with the budget and also because the ICC credit extension impacted cash negatively by $38 million.

11) Norfolk and Southern would invest $130 million more in capital in 1986 than Conrail and NS pro forma's show that investment rate to be 21% higher.

There has been no indication regarding Norfolk Southern capital expenditures plans for Conrail property other than the $350 million 5-year capital investment covenant included in its bid.

12) Guilford will be an effective competitor because "even Lionel could run successfully over those lines."

Before Lionel or Guilford could operate the divestiture lines the following plant restructuring would be required:

- On Day 1 following the divestiture construction of a connection will be necessary for Guilford to reach any of its western extension beyond Cleveland. This will require an expenditure of $320,000.
- Another connection will be required at Crestline Ohio before the divestiture lines can be reached at a cost of $1.45 million.
- Four more connections - one at Detroit and three in East St. Louis will be needed for Guilford to reach its yard facilities in the cities.
- In order for Guilford to offer intermodal service, facilities must be constructed at Chicago, Detroit, East St. Louis, and New Jersey. The New Jersey facility alone is estimated to cost $17 million.
- Before Guilford can run its proposed services, it must buy locomotives and equipment that are in short supply and are very costly.

Perhaps Lionel can afford this, but Guilford cannot. Its audited 1984 financial statements show a net loss from rail operations, and its available 1985 figures show a significant decline from 1984. Guilford's own recent submission to the Justice Department shows over $20 million in subsidies in 1985. (Attachment E)

Hopefully Lionel would demonstrate more skill than Guilford at planning its operations:

- Guilford's current business plan contains train schedules that would result in collisions between its trains and Amtrak's and between its own trains. Indeed, one of its trains is scheduled for four collisions every day.
- Guilford shows its trains will traverse the 128-mile Fort Wayne to Chicago line at average speeds of 51 MPH whereas the maximum allowable speed on this line is 50 MPH.

Finally, Guilford will have to overcome the structural disability imposed on it by the divestiture plan itself, which relies heavily on car haulage and reciprocal switching arrangements which are costly, time consuming and cumbersome. This likely will result in Guilford being unable to become a viable, competitive presence in the markets to which the divestiture plan is addressed.

13) Morgan Stanley would take $240 million in cash out of Conrail in order to pay the $1.4 billion increased purchase price.

The increase in the offer for Conrail by Morgan Stanley from $1.2 billion to $1.4 billion would be provided externally by the Morgan Investors group and would not come from Conrail cash.

14) Conrail would be unable to pay to the Government $250 million a year as CBO projected in their report.

Based on Conrail's five year outlook of last June, 1985, Conrail could pay the government about $250 million a year without any impairment in service and without deferring any capital requirements. CBO forecast a $200 million a year repayment schedule.

15) Stand alone Conrail can generate the same tax benefits as NS.

The statement is only valid if Conrail's profits would be significantly greater than currently forecasted.

Mr. Riley should be consistent in his comments. Either Conrail will have significantly greater profits and generate the same tax benefits as Norfolk Southern (NS), or Conrail will deteriorate over time, in which case there would be greater tax benefits available to NS.

Irrespective, various estimates have been made concerning the impact on federal tax revenues of a stand alone Conrail (Morgan Stanley proposal) versus a sale to the Norfolk Southern. Recently, the Congressional Budget Office concluded that lost tax revenue to the government would be $500 million. A Department of Treasury study issued in January, 1986 concluded that a sale to NS would result in lost tax revenues of approximately $200 million. A Morgan Stanley study issued in July, 1985 concluded that the government would forego $577 million (present value) in tax revenues as a result of an NS-Conrail combination. The evidence is clear, an NS-Conrail combination vs. a stand alone Conrail will result in significant lost tax revenue to the government.

16) NS offer is worth more to the government because they will assume asbestos claims, orphan bridge claims, $1 billion in equipment debt and would generate $100 million in new North-South traffic.

Conrail has consistently demonstrated its ability to satisfy its equipment debt requirements and additionally has made adequate provisions for asbestos claims or bridge claims. The alleged new North-South additional traffic of $100 million from the Norfolk Southern position would result form a diversion of traffic and would not impact the Government's position.

I appreciate the opportunity to correct the record and would ask that this letter be incorporated in the hearing record.

Sincerely,

William B. Newman, Jr.

WBN:jaw

cc: Management Committee:

L. Stanley Crane
S. M. Reed
H. William Brown
R. B. Hasselman
C. N. Marshall
B. Resnick
A. D. Schimmel
M. D. Sims
R. C. Sullivan
R. E. Swert
J. T. Whatmough
B. B. Wilson

R. B. Opitz

Please Note:

The attached letter was also sent to the following members of the Subcommittee on Transportation and Related Agencies:

The Honorable Frank R. Wolf

The Honorable William Lehman

The Honorable Martin Olav Sabo

The Honorable William H. Gray, III

The Honorable M. Robert Carr

The Honorable Richard J. Durbin

The Honorable Robert J. Mrazek

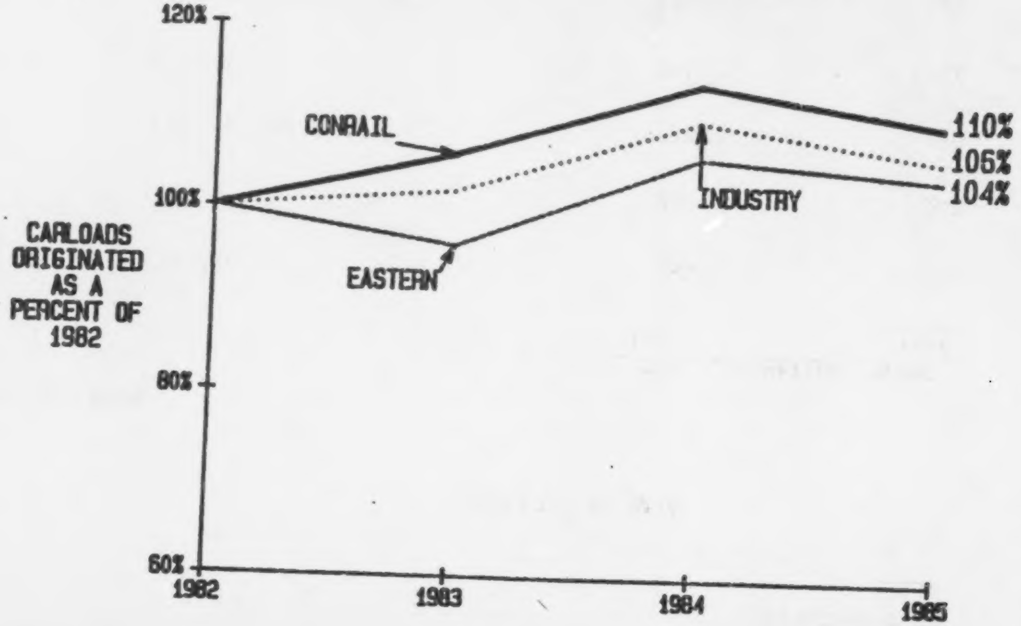
The Honorable Lawrence Coughlin

The Honorable Silvio O. Conte

The Honorable Carl D. Pursell

ATTACHMENT A

CHANGE IN TOTAL CARLOADS ORIGINATED -- 1982-1985
CONRAIL, EASTERN DISTRICT, AND INDUSTRY
DATA FROM CS 54A REPORT



ATTACHMENT B

NON-OPERATING DATA

($ in Millions)

	Non - Operating Income	
	1985	1984
Conrail	$ 154	$ 148
CSX	237	243
Norfolk Southern	234	260
ATSF/SP	274	253
Burlington Northern	175	149
UP System	130	138

Note: Nonoperating income includes miscellaneous rentals, real estate sales and dividends and interest.

SOURCE: Reports to the Interstate Commerce Commission.

ATTACHMENT C

CASH FLOW

SALE OF PROPERTIES - ETC.

YEAR	R.E. Profit in P&L	Proceeds - RE Sales: NERSA*	Proceeds - RE Sales: Regular (In Excess of P&L)	Proceeds - RE Sales: Total	Salvage	Other Items	Total Proceeds,etc.
1985	$ 29**	$ 17	$ 15	$ 32	$ 28	$ 15	$ 75
1984	14	11	8	19	52	10	81
1983	9	9	4	13	35	4	52
1982	17	27	4	31	18	18	67
1981	13	-	11	11	43	25	79
TOTAL	82	64	42	106	176	72	354

* Under NERSA an abandonment Reserve was provided in December 1981 for the future Disposition of Unneeded Rail Property.

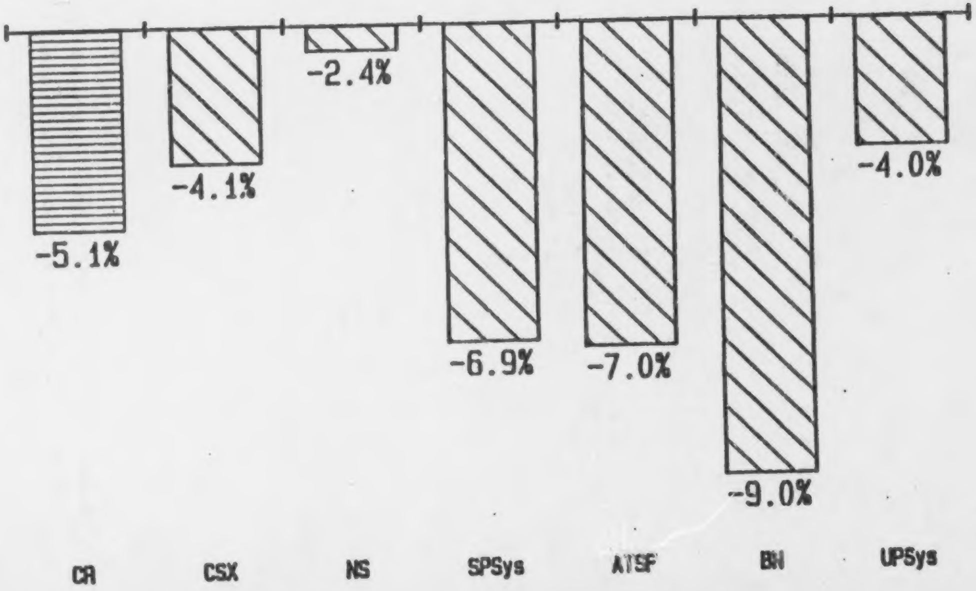
** Includes $14 million income on sale of Canada Southern properties.

ATTACHMENT D

OPERATING REVENUES – PERCENT CHANGE

TOTAL YEAR, 1985 vs 1984

(Railroad Only)



ATTACHMENT E

There are no loan agreements between either the GTI Rail Division and GTI's parent corporation or between the GTI Rail Division and Timothy Mellon.

Request No. 9. All documents that contain plans or proposals for GTI to participate in third party lease arrangements.

RESPONSE: Although GTI expects to lease locomotives and certain other equipment or facilities, GTI currently has no specific plans or proposals to participate in third party lease arrangements involving the acquired assets. Accordingly, GTI has no documents in response to this request.

Request No. 10. A schedule of federal, state and/or local subsidies (grants) expected to be received by GTI for 1985-1987.

RESPONSE: The following is an updated version of information contained in the GTI Rail Division Financing Memorandum (September 1985) contained in the response to Request No. III.16, below:

	($ in 000's)				
Boston & Maine	1985	1986	1987	1988	1989
Deerfield Yard Rehab.	$1,000	$4,400	$2,000	$ 0	$ 0
Connecticut Branch Line	0	1,000	0	0	0
JOBS Bill - MBTA in Freight Territory	200	0	0	0	0
Federal Crossing Program	3,000	600	600	600	600
TOTAL	4,300	6,000	600	600	600
Delaware & Hudson					
New York Bond Program	10,500	2,000	0	0	0
E. Binghamton Engine House	2,350	0	0	0	0
Belden Tunnel Project	6,000	2,500	0	0	0
Pennsylvania Bond Project	1,500	2,400	2,400	0	0
Federal Crossing Program	400	400	400	400	400
TOTAL	20,750	7,300	2,800	400	400
Maine Central					
Federal Crossing Program	400	400	400	400	400
TOTAL	$25,450	$13,700	$5,800	$1,400	$1,400

Request No. 11. Documents detailing the status of renegotiations for Boston commuter train service, including net fees/bonuses for GTI or its Rail Division.

Response: GTI is producing a letter dated September 27, 1985 from Eugene J. Sullivan, Jr. to James R. Stoetzel and a letter dated October 24, 1985 from J. R. Stoetzel to Eugene J. Sullivan, Jr. These are the only documents that currently exist regarding the status of these renegotiations. See G00615-00616.

CAPTIVE SHIPPERS

Mr. COUGHLIN. Many coal and utility shippers are asking Congress to reopen the rate-making provisions of the Staggers Act because they believe the railroads have been gouging captive shippers.

Do you think the railroads have been treating their captive shippers unfairly?

Mr. RILEY. For the most part, I do not think that the railroads have been treating captive shippers unfairly. In any system that is run by human beings, you can always come up with bad cases, hard cases, and the transition from pre-Staggers to post-Staggers, from a regulated to a partially deregulated environment, changes shipping patterns that existed for 50 years and that is not going to be done without some rough edges.

But by and large, if you look at the price statistics, across the board for the railroad industry, you will find that the rate of increase in rail prices, which hovered over 10 percent pre-Staggers, has come down steadily since the passage of the Staggers Act, to 5 percent, to 4 percent, and to less than 1 percent a year ago.

And those are the published rates. The published rates are almost uniformly higher than the unpublished contract rates, and the bottom line is that at the time the Staggers Act was passed in 1979, shippers were losing as much as railroads were losing from the railroads' financial problems.

We had a quarter of the nation's track in bankruptcy. 43,000 miles under slow orders and poor service. And the real debate was whether to deregulate the industry, or whether to nationalize it.

Today, the industry is profitable on a uniform basis, not wildly so. The rate of return last year was about 5 percent, and only in the railroad industry would you see unrestrained enthusiasm for a 5 percent rate of return, because it is so much better than historic standards.

But the industry has been able to increase its rate of return, and yet lower, in some cases actually lower objectively as well as lower the rate of increase in rail rates.

There always has to be some forum to go to to test a rail rate that applies to a captive shipper, that is over a level we would all concede to be reasonable, and the ICC is going to have to call those on a case by case basis.

But I have got to stress to the committee, that as of February 28, 776 of the 864 rate complaints filed under the Staggers Act were dismissed before the ICC reached any decision, primarily as a result of negotiated settlements, and it is good evidence of the fact that the incentives of the system were working to have parties settle their agreements with one another.

So I think that the statistics just preclude any claim that there is a systemic problem under Staggers. Rail rates have moderated significantly since the passage of the Staggers Act—significantly—and they have gone up even less than the rate of rail inflation, and the rail industry has been able to become profitable again not by upping its prices but by broadening its base, and by competing for commodities like perishables, fruits and vegetables, that it just could not effectively compete for in a regulated environment.

COAL RATES

Mr. **Coughlin**. Do you think the current ICC interpretations of the Staggers Act in the area of coal rates and captive shippers are correct?

Mr. **Riley**. We did a filing in the coal rate proceeding and I think our position has been made a matter of record in that, and it is long and complex, and I will submit it for your record.

[Clerk's note.—The information was provided for Committee files.]

As for captive shippers, these issues are handled on a case by case basis, as you know, and I have not made it a practice to second-guess the ICC's judgments on the specific facts, on a case by case basis, but I will say that I believe the ICC has generally applied the captive shipper provisions of the Staggers Act fairly, and the fact that it is applying those provisions fairly is evidenced by the frequency with which parties settle their own disputes.

That is not to say there are not hard cases; there are. But the system is better than the one it replaced, from every perspective.

LINKAGE OF CONRAIL AND CURE LEGISLATION

Mr. **Coughlin**. Some Members of Congress are on record as saying they will support your Conrail sale bill only if it includes provisions providing greater rate protections for captive shippers.

If a bill came out of the House approving the Norfolk Southern sale but also amended the Staggers Act along the lines proposed by the CURE group, would you recommend that the President sign it?

Mr. **Riley**. I have always viewed the linkage between the CURE bill and the Conrail bill as a false issue, for this reason.

Those who support the CURE bill—and I oppose it—those who support the CURE bill, either have the votes to pass it or they do not.

If they have the votes to pass it, they will tie it to every piece of legislation to which it is germane. The Conrail bill is only one, and that goes all the way up to and including the reconciliation bill.

If they do not have the votes to pass it, it is not going to be a problem.

I think the industry has to deal frontally with the CURE bill, and I think the very large group of shippers who want to preserve Staggers have to deal with it frontally.

It will either be on every piece of rail legislation, or it will be off every piece, and we are going to oppose it.

Mr. **Coughlin**. You have not answered the question, though. If it were amended under the Norfolk Southern sale, would you recommend it to the President?

Mr. **Riley**. Well, to be honest with you, I have not crossed that bridge in my mind because my view is that either they will not succeed in putting it on the Norfolk Southern bill or they will pass it on every single rail bill that comes up to us.

And I am pleased by the comments that a number of the Members have made.

The Conrail is too important an issue to mix with this type of proposal, and I am really hopeful that Congress will not take that course because there are so many other places that the CURE bill can be put, and I suspect that a number of those are almost veto proof, and we are going to continue to oppose it because it is bad policy.

I do not want to go back to an era in which a quarter of the nation's track is in bankruptcy. That is not in anybody's interests.

ICC SUNSET

Mr. **Coughlin**. The President has proposed "sunsetting" the ICC and transferring many of its rail regulatory functions to DOT.

Many are concerned that DOT has historically been "pro-railroad" in its outlook and that it cannot be counted on to adequately protect shipper interests.

Would you characterize DOT's past positions on rail regulatory matters as being "pro-railroad," and what assurances do we have that DOT would have an impartial outlook in the future?

Mr. **Riley**. I really cannot accept the theory that DOT's positions have been pro-railroad. I have to say that because DOT's recommendations—and this was a democratic-controlled DOT at the time—were accepted in the passage of the Staggers Act, we now have a railroad industry that is capable of serving shippers nationwide.

We call these issues on a case by case basis, and there have been times when we have gone out and supported the shipper; there have been times when we have supported the railroad.

But overall shippers have a much higher and more reliable level of service today than they have ever had at any time in their recent history, because the legislative recommendations of the Department were adopted.

Now, if you really want to get a sense of how the transfer might work—although the final details have not been put together yet and presented to Congress—this is no different than what we went through at the Civil Aeronautics Board last year, and I do not think you should expect the rate-making authority to be transferred to the Federal Railroad Administration any more than the CAB authority was not transferred to the Federal Aviation Administration.

The way the CAB works now, the Office of Policy, which is walled off from the FAA, hears these issues on a case-by-case basis, and I think they have heard them fairly.

As to the Department being pro-railroad, that is a cliche that I just cannot accept. I go out to shippers' meetings and I am criticized for being too supportive of the railroad industry in our regulatory filings.

I go over and meet with the Association of American Railroads, as I did last week, and I got a tongue-lashing from the Association of American Railroads.

Everybody thinks we are too close to the other side and I think that probably means we are about right.

FURTHER RAILROAD DEREGULATION

Mr. **Coughlin**. Do you think over time that the railroad industry should be deregulated further and if so, in what areas?

Mr. **Riley**. I honestly have not made up my mind on that. That is a good question. A year ago we discussed this within the Department and I was of the opinion at that time that there should not be further deregulation at this point.

There are many details of the Staggers Act that still have to be worked out and worked through. The ICC, frankly, and I think this has been part of the problem—honestly—has been very slow in working out the standards that it will use in handling rate cases.

And rate cases have stacked up over at the ICC, waiting for the Commission to set its standards. One good thing that has come out of the last year is that the Commission has now succeeded in setting a number of standards and they have promoted coal rate guidelines.

We now have got to take a look at what they do with that before deciding whether there should be additional deregulatory steps taken.

CONSULTATION WITH ICC

Mr. **Coughlin**. We understand that the ICC has not been included or consulted in developing the sunset bill. Is there any particular reason why they have not?

Mr. **Riley**. I really do not know the answer to that because, you know, FRA has stated some views on how the sunset bill should look, but we are not at the center of writing it either.

Mr. **Coughlin**. We had testimony to that effect.

Mr. **Riley**. I am not enough in that process to tell you. We have submitted some of our own views and we have not been authoring the sunset bill either. I really cannot tell you.

ALCOHOL AND DRUG RULE COURT CHALLENGE

Mr. **Coughlin**. You issued your final rule to control alcohol and drug abuse—and we congratulate you—in railroad operations last July. Could you bring us up to date on the court fight surrounding this rule.

Mr. **Riley**. Shortly before the rule was due to go into effect, RLEA sought an injunction against it in a U.S. District Court in the State of California.

We offered our RLEA a deal in effect, that we would consent to the issuance of a preliminary injunction, if they would consent to a trial of the case within 30 days so that we could get the issue resolved.

They accepted that. The case was argued on November 26th and the court granted summary judgment in FRA's favor on every count.

Shortly before the rule was then set to go into effect, RLEA appealed the lower court's ruling to the 9th Circuit. The 9th Circuit, by a two to one vote, a split vote, granted a stay of the rules until completion of the appeal.

Frankly I was very concerned with that because statistics alone tell us that if we had an eight to ten month stay, the odds were pretty good that some people would die who might not otherwise die, so we appealed that to the U.S. Supreme Court.

And in a unanimous vote, the U.S. Supreme Court ordered the stay overturned and permitted the rule to go into effect. And where we are today is, the rule is in effect, and it has been in effect for about a month now.

We are still, however, in court out in the 9th Circuit and the case will have to be tried on its merits in the 9th Circuit. Jack, you may know more about the present standing of the appeal than I do.

Mr. **MASON**. We are briefing the case. The case will be argued orally on the briefs. The draft is on my desk right now. We are working on ours with the Justice Department.

And all of the issues are open in the 9th Circuit, from the Fourth Amendment all the way to some of the other lesser known arguments made by the railway labor plaintiffs.

We will have oral argument some time this spring I hope, and the 9th Circuit will make its decision. We will probably have the same panel that heard and decided the stay application.

Mr. **COUGHLIN**. Who is fighting you in court on this rule and what is the basis for their complaint?

[The information follows:]

96a

The Railway Labor Executives' Association and three rail unions are the plaintiffs in the lawsuit challenging FRA's Alcohol and Drug Regulations. Their basic argument is that the testing provisions of our rule violate the Fourth Amendment's prohibition against unreasonable searches and seizures because they permit or require searches in the absence of "traditional" probable cause, i.e., reason to believe that a violation has been or is being committed. At the very least, they argue, personal searches must be based on "individualized suspicion" that a particular employee is impaired by, or under the influence of, alcohol or drugs.

FRA's response has various distinct components:

1. Our central argument is that all of the testing under the rule is supported by the "administrative probable cause" doctrine. The cases comprising that doctrine permit searches, especially in the health and safety area, without the need for individualized suspicion as long as the searches are not unduly intrusive and serve a legitimate governmental interest, and as long as the search criteria limit the discretion of those empowered to search by restricting searches to certain objective circumstances. Measured by this standard, our rule clearly satisfies the Fourth Amendment.

2. Because the testing authorized (as opposed to the testing required) by FRA's rule does not mandate carrier action, such testing is not "state action" and therefore is not subject to the Fourth Amendment.

3. One type of authorized testing unquestionably meets the individualized suspicion standard, since it can occur only where a supervisor (or, for urine testing, two supervisors) reasonably suspects that a particular employee is impaired by or under the influence of alcohol or drugs.

4. Because the rule provides that employees in covered service are deemed to have consented to testing, all searches performed under the rule are consensual and are therefore reasonable *per se*.

96b

Plaintiffs raise a number of other issues, summarized below:

- Plaintiffs argue that the rule's failure to permit union representation during testing contravenes the Railway Labor Act. But there is neither statutory nor case law support for any right to representation at testing, which in any event would be impractical and pointless.

- Plaintiffs assert that the rule violates the Federal Rehabilitation Act. Our rule does not single out alcoholics or drug addicts for testing; and, far from requiring dismissal of any such persons who may be in covered service, the rule requires counseling and treatment for any troubled employees who voluntarily refer themselves or are referred to the Employee Assistance Program. Moreover, the statute itself excludes from the definition of "handicapped" a person whose on-the-job alcohol or drug use would threaten the safety of others.

- Plaintiffs argue that the rule's exclusion of supervisory personnel from testing and the exclusion of small railroads from certain provisions are both so discriminatory as to deny them due process of law. But both the supervisor and small railroad exclusions have a rational basis, and they closely mirror similar distinctions made by Congress under the Hours of Service Act. FRA believes the Fifth Amendment requires nothing more in these circumstances.

- Plaintiffs argue that FRA lacks authority to authorize the testing called for by the rule, and especially the authority to delegate such power. However, the Federal Railroad Safety Act of 1970 provides ample authority for the testing and its delegation.

ACCURACY OF DRUG TESTS

Mr. COUGHLIN. It was recently reported that a study of 13 laboratories conducted by the Centers For Disease Control showed an error rate of 66 percent in the drug tests they performed.

How does your rule guard against the real possibility of inaccurate test results?

Mr. RILEY. We gave a lot of thought to that in the development of the rule, and what our rule does, in addition to—we were very careful in selecting the laboratories that do the tests, and I think that has got to be the starting point—we require that all positives be re-tested by a different specified method.

And without going into a lot of detail on that, I think that our method of cross-checks is the state of the art.

We do require re-testing by a different method for every positive, and I think that is the best way to build in a level of protection on that.

Mr. COUGHLIN. It has been reported that certain drug tests can be easily subverted by such means as adding salt to urine specimens.

How does your rule guard against widespread cheating and abuse of these tests?

Mr. RILEY. Well, I am not sure that I would accept the premise that there is widespread cheating and abuse but we were concerned about the possibility. The original draft of the rule had company personnel taking the urine test, and labor objected to that, and on hearing their objections, I have to tell you that I found myself in agreement with their position.

They proposed a system whereby the tests would all be taken at independent medical laboratories under medical supervision.

We accepted that provision, to eliminate precisely this problem, and ironically they are now suing us on that provision as well, but I have to say that I think their idea was a good one and it is the state of the art.

Independent medical personnel guarantee the integrity of those samples.

PRE-EMPLOYMENT SCREENING

Mr. COUGHLIN. What does your rule require with respect to preemployment alcohol and drug screening?

Mr. RILEY. It is not an alcohol-screening rule although alcohol could show up. It is a drug-screening rule. I am of the opinion that the drug problem in our industry is probably not as serious as it is in some others because we have a relatively old-age profile.

It is a declining employment industry; we have not hired as many new people, and the drug problem tends to be somewhat generational.

To keep it that way, every employee, or potential employee, who wants to come into this industry, takes a pre-employment physical. They test them for just about every other health hazard under the sun but this. And what we require them to do is that when they do the screening on the urine test which they already take, that they include drug screening as well.

That is what it involves, and I do not think it is too much to ask an employee who wants to run a railroad train to show up "clean" on the day of his pre-employment physical.

RANDOM ALCOHOL AND DRUG TESTS

Mr. COUGHLIN. I believe your rule would also give the railroads authority to conduct random alcohol and drug tests on employees.

How would these tests be conducted? What situations would give the railroads "just cause" to make these spot checks?

Mr. RILEY. Just or "reasonable" cause is carefully defined in the rule and we spent a lot of time analyzing just what that definition should be.

Reasonable cause is defined—and I will submit the exact text for your record—but, reasonable cause embodies three concepts. One is the type of observation that would lead the normal person to conclude there was a problem.

And it is situations such as smelling alcohol on the breath or the other common observations that would lead you to be concerned. Secondly, the violation of certain enumerated safety rules, which are both serious and connected to human performance decrement—i.e., a train runs through an absolute stop signal. That is a human performance issue, by definition.

And third, there are reportable accidents and injuries where the supervisor reasonably suspects that the particular employee contributed to the cause or severity of the event.

That is the rough definition of reasonable cause. I have to add that the fundamental difference between us and labor on this rule from the beginning has been—and if you go back and look at all the testimony that was offered in the record—they have felt an obligation I think to resist testing.

And while I understand why they have to do that, a rule without testing is no rule at all.

A rule without testing is essentially what we have now. If you do not have the ability, when you have got reasonable concern, to determine for sure whether an employee is in violation of Rule G, then you have a situation where suspicion of Rule G is going to hang over every accident and taint every employee.

In addition, you are going to have a situation where management will be hesitant to act, even when they are concerned, because the case will do no better than go into arbitration and be one man's word against the other.

You have to have the ability to test if the rule is going to have any impact, and I recognize that it is not an enjoyable thing to take a breathalyzer test, or to take a urine test. I have taken both, frankly, and of course I have been caught in a couple of different drug tests, and various things in my life, and I passed; but that is not the most pleasant thing you will ever—I had to say that because I said I had been caught in them, and I can just see that being quoted in the paper tomorrow, and I have used the wrong phrase.

And it is not—you know—it is not something to look forward to all day long. But the whole experience takes about a minute.

And if that is going to save the lives of a lot of people—and 85 percent of the people who die in these accidents are railroad employees—I mean, that is a sacrifice that I would be willing to make, I think you would, and I think most railroad employees would be willing to make.

ALCOHOL AND DRUG RULE SUMMARY

Mr. COUGHLIN. Please provide for the record a summary of the major provisions of your alcohol and drug rule.

[The information follows:]

FRA's alcohol and drug rule has six subparts, summarized below:

Subpart A: General Provisions

- o Defines universe of employees covered by rules, primarily including train and engine crews, operators/dispatchers, and signal maintainers.
- o Requires and implies covered employees' consent to certain toxicological testing. § 219.11.
- o Makes clear that the rules do not authorize physical coercion to compel breath or body fluid testing. § 219.11(e).

Subpart B: Prohibition of Alcohol and Drug Use

- o Prohibits on-the-job use of, possession of, or impairment by alcohol or controlled substances. § 219.101. Under certain conditions, makes exceptions for prescribed drugs. § 219.103.

Subpart C: Post-Accident Toxicological Testing (Mandatory)

- o Requires railroads to take all practical steps to assure that covered employees provide blood and urine samples for toxicological testing by FRA when they are directly involved in any of the following serious accidents or incidents (§ 219.201):

1. A major train accident involving:
   a. a fatality,
   b. a release of hazardous materials that causes an injury or evacuation, or
   c. damage of $500,000 or more.
2. An "impact accident" (collision) resulting in:
   a. injury, or
   b. damage of $50,000.
3. A train incident that fatally injures any on-duty railroad employee.

1016

- o Blood and urine samples must be taken at an independent medical facility by qualified medical personnel. § 203(c).

- o An employee who refuses to cooperate in testing generally may not perform covered service for nine months following the refusal, although a hearing regarding the employee's refusal to submit to testing is required. § 219.213(b).

Subpart D: Authorization To Test For Cause (Not Mandatory)

- o Authorizes a railroad to require a covered employee to submit to a breath or urine test (but not a blood test) under the following circumstances:

  1. Reasonable suspicion: a supervisor has a reasonable suspicion that the employee is under the influence of or impaired by alcohol and/or controlled substances, based upon specific, personal observations that the supervisor can articulate concerning the appearance, behavior, speech or body odors of the employee. Before a urine test, this determination must also be made by a second supervisor and, if the employee is suspected of being under the influence of or impaired by a controlled substance, one of the supervisors must be trained in spotting drug use. § 219.301(b)(1) & (c)(2).

  2. Accident/incident: an employee is involved in an accident/incident that must be reported under FRA's accident reporting regulations and a supervisor has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity of the accident. § 219.301(b)(2) & (c)(1).

  3. Rule violation: the employee is involved in a violation of one of the railroad operating rules listed in § 219.301(b)(3). By their very nature, such rule violations call into question the fitness of the employee involved.

- o Specifies procedures and safeguards to be followed in conducting the tests to ensure that they are performed safely and competently. §§ 219.303, .305. Gives the employee the right to a blood test at the time of the breath or urine testing. Id.

Subpart E: Identification of Troubled Employees

- Requires railroads to establish a voluntary referral policy under which an employee with an alcohol or drug abuse problem may refer him or herself, or be referred by a co-worker or union representative, for assistance. An employee who cooperates in such a program must be returned to work upon successful completion of counseling or treatment. § 219.403.

- Requires establishment of a co-worker report policy under which an employee may report that a co-worker is on duty while impaired without fear that the impaired employee will be dismissed. The impaired employee who cooperates in counseling or treatment cannot be dismissed. § 219.405.

Subpart F: Pre-Employment Drug Screens

- Requires urine testing of all final applicants for covered positions to detect the presence of drugs. Applicants must be notified of the test before the sample is taken. § 219.501.

ALCOHOL AND DRUG RULEMAKING DELAY

Mr. Coughlin. The National Transportation Safety Board has criticized the FRA for moving too slowly on the alcohol and drug abuse issue.

Your rule has come a full 12 years after the Safety Board first called for it.

Why has it taken the FRA so long to finally take regulatory action against drugs and alcohol?

Mr. Riley. I cannot speak to any of the history before I got to FRA 27 months ago. I can tell you in terms of why it took us about 16 months to do the rule, because the issues, particularly on the drug side, were very, very complex.

Issues such as how do you deal with the possibility of a false positive, that was raised in your other questions, required us to go out in the field and study the state of the art, to learn as much about it as we could.

We felt that we would do more damage by attempting to rush the rule than we would be taking it methodically and doing it right.

And honestly, when I look back on this now, I really do not think that we could have done it well, in less than the 16 months it took us. I cannot speak to the previous time. I was not here.

I have to make a comment on that NTSB criticism, though. That is not a fair criticism, and I really want to be blunt and tell you why it is not a fair criticism. I give NTSB a lot of credit for focusing public opinion on this issue. I think they played a role in building the public mandate that ultimately led to the rule.

But in defense of my predecessors, some of whom I do not know, the NTSB recommended only three things. They wanted a Federal rule "G" which is largely symbolic, because all railroads have rule G's already. The problem is not lack of a rule; it is lack of testing authority and lack of incentives for employees to seek help.

They recommended post-accident testing, which we agreed with and embodied in our rule, and they recommended some technical changes in our accident reporting standards, which I also agreed with.

So I implemented all of their recommendations. But had we stopped there at what they recommended, I do not think we would have begun to touch this problem, because we would not have gotten into testing, we would not have gotten into the issue of what incentives you can give an employee to seek help, prior to the time that that employee does hurt himself or kill a fellow employee, and we would not have gotten into the whole issue of pre-employment screening, which I think is terribly important.

So I really do think that the meat of the issue, the piece of the issue that really took the time, was outside the scope of the NTSB recommendations. And don't misunderstand what I have just said. I give them all the credit in the world for getting this started, because I think, in a lot of ways, they did get it started.

But on the other hand, what we did went well beyond what the NTSB recommended.

ALCOHOL AND DRUG RULE ENFORCEMENT

Mr. **Coughlin**. This rule of course will not be effective if it is ignored. Assuming the courts uphold your rule, how are you planning to enforce it?

Mr. **Riley**. We intend to enforce it rigorously. The rule has only been in effect for the past three weeks, so it is very difficult for me to give you a lot of details.

But there are mandates in the rule, some sections of it are mandatory, some are permissive, and we are going to be absolutely as strict in ensuring that the industry follow the responsibilities it has as we are in protecting individuals by harassment from either management or labor, and they could both do it under different provisions of the rule.

ALCOHOL AND DRUG RULE SAFETY IMPACT

Mr. **Coughlin**. What impact do you expect this rule to have on the safety of railroad operations, especially in terms of injuries and fatalities?

Mr. **Riley**. I think it will have a significant impact. You know, we really cannot measure, with certainty, what the impact of alcohol and drug use in the railroad industry has done because we have not had the ability to test, and, without the ability to test, the only time you ever find out for certain is when you have a fatality, and the autopsy shows the presence of alcohol or drugs.

But in 16 percent of the autopsies we have performed in a recent 7-year period, we have found significant traces of alcohol or drug, and I think that gives you some measure of what I believe we can avoid.

And I really have to say I do not think the alcohol and drug problem in our industry, among our employees, is any worse than it is among any basic industry. There is nothing wrong with railroad employees.

It is a societal problem; it affects all basic industries I think in particular and it affects all of us. It is really just the fact that an impaired railroad employee can inflict so much more harm on human beings than an impaired lawyer. It is that difference in exposure of risk.

Mr. **Lehman**. How about an unimpaired lawyer?

Mr. **Riley**. Well, perhaps I should use another example. Than an impaired investment banker. [Laughter.]

Our rule has got to be tougher than Peter Uebberoth's rule, because a baseball player who has got a problem gives a bad example; a railroad employee that has got a problem can kill a lot of people; anyone unfortunate enough to live near a hazardous material train. And that is the issue. I do not think our problem is that much worse but I think that the need to address it is just so much stronger.

Mr. **Coughlin**. Mr. Chairman, that completes that section.

ACTION FOLLOWING POSITIVE DRUG TESTS

Mr. **Lehman**. Thank you, Mr. Coughlin. I would just like to ask one follow-up question. If you find people with a positive urinalysis showing a drug indication, you do not hire them, do you?

Mr. **Riley**. That is right.

Mr. **Lehman**. But suppose you find some of your existing employees with the same problem? I know in the Coast Guard, one bad test means automatic dismissal.

What do you do with the people you do find? Do you put them in a rehab program or what?

Mr. **Riley**. It is a good question. We had to decide whether to Federalize the response to a positive drug test, and that is one of the things that we debated.

Clearly we could not say to a railroad, if you ever have a drug test turn up positive, this guy is banned for life.

I think there would be serious questions about our ability to deprive someone of employment for life.

On the other hand, we would certainly not say the man stays on the roll. What we decided to do, after mandating the testing, was to leave the response to the carriers on a case-by-case basis.

We felt that the carriers know the issues, know the people and know the facts surrounding each incident better than we do, and recognizing that human beings would have to make this judgment, and recognizing that in any case where human beings make judgments there are going to be mistakes, we simply felt that a bunch of political appointees in Washington could not make that penalty decision better than the carriers could out in the field.

Now this is an aspect of the rule that we are going to watch very closely.

We are going to do oversight hearings six months from now and then a year from now. And if we find that that delegation is not working then we will have to change it and Federalize the response.

But I would prefer to leave some flexibility in the response because it is very clear that there is a difference between someone who tests positive for a high level of cocaine, and someone who has a slight test of marijuana, which might indicate that he had smoked off duty at some time.

I do not condone either but I think you have to recognize there is a distinction between them.

Mr. **Lehman**. Next year we will reframe this question. It might be a good question to see what you find out, in next year's hearings.

John, can you come back at 1:30?

Mr. **Riley**. I certainly can.

Mr. **Lehman**. We will adjourn until 1:30.

Afternoon Session

RAILROAD SAFETY PROGRAM PERFORMANCE

Mr. **Lehman**. The Subcommittee will come to order.

The Secretary's Safety Review Task Force, which is analyzing the effectiveness of all DOT safety programs, issued its report on the FRA last October.

They gave the FRA high marks in most areas. Is your safety program as good as they say it is? Or better?

Mr. **Riley**. A hard question for me to answer, but I want to give a lot of credit to the man on my left, Joe Walsh, who came to us from the Signalmen's Union, and has really done an outstanding job on safety.

I think the real answer to that question is that I judge safety programs by their results, and the rather steady decrease we have had in accidents across the board, over the last three years, I think is the real litmus test of the effectiveness of our safety program.

SAFETY REVIEW TASK FORCE REPORT

Mr. **Lehman**. Please provide for the record a copy of the Secretary's safety task force report.

[The information follows:]

U.S. Department of
Transportation

REPORT OF THE
SAFETY REVIEW TASK FORCE
ON FEDERAL RAILROAD ADMINISTRATION
SAFETY PROGRAMS

October 1985

REPORT OF THE SAFETY REVIEW TASK FORCE
ON THE FEDERAL RAILROAD ADMINISTRATION

TABLE OF CONTENTS

Chapter 1 Rail Industry - An Overview........................Page 2

Chapter 2 FRA Safety Mission................................Page 6

Chapter 3 Safety Goals......................................Page 10

Chapter 4 National Inspection Plan..........................Page 12

Chapter 5 Inspector Workforce...............................Page 14

Chapter 6 Enforcement.......................................Page 18

Chapter 7 Rulemaking..Page 21

Chapter 8 Safety Statistics.................................Page 24

Chapter 9 Hazardous Materials...............................Page 27

Chapter 10 Rail-Highway Crossings and Trespassers..........Page 31

Chapter 11 Railroad Employee Safety.........................Page 35

INTRODUCTION

Rapid and significant changes in the transportation environment resulting from technological advances and economic deregulation have raised concern as to whether the new environment created by these changes could result in a reduction in safety. To determine if this concern was valid and to ensure that safety would not be compromised, the Secretary of Transportation established a Safety Review Task Force with the mandate to review and analyze the safety programs of each operating administration within the Department. This report reflects the results of the Task Force review with respect to the safety programs of the Federal Railroad Administration (FRA).

The methodology employed by the Task Force included analyses of all available documentation pertaining to FRA safety programs, including reports prepared by the General Accounting Office (GAO) and the Office of the Inspector General (OIG), and National Transportation Safety Board (NTSB) recommendations. The Task Force conducted several meetings and interviews with FRA safety personnel; held meetings with rail management, rail labor, and rail equipment manufacturing officials; and made several field visits to gain firsthand knowledge of railroad operations and FRA regional safety programs. Based on these interviews, discussions, and analyses, the Task Force concludes that the FRA is effectively meeting its overall safety responsibilities.

In recent years, FRA has made major programmatic and management improvements which have resulted in an effective safety program well suited to today's railroad environment. The Task Force believes that FRA's approach to monitoring and inspecting the safety of the rail industry is sound and generally is being applied effectively. Measures to steamline the enforcement program have resulted in improved efficiency over the past three years. Rulemaking has generally been timely and regulations are uniformly applied and interpreted. FRA has made a particular effort to be responsive to NTSB and has reduced the backlog of open recommendations by more than 40 percent since the end of 1983.

The report addresses the following areas: Safety Goals; The National Inspection Plan; Inspector Workforce; Enforcement; Rulemaking; Safety Statistics; Hazardous Materials; Rail-Highway Crossings and Trespassers; and Railroad Employee Safety. The Task Force has made a number of recommendations in some of these areas that should result in further improvement in the FRA safety program.

The Task Force was impressed throughout its review with the dedication of FRA employees in carrying out their safety responsibilities. In addition, the interest in rail safety and the cooperative spirit demonstrated by FRA and the rail industry played a major role in the completion of this review.

Chapter 1 Rail Industry - An Overview

The rail industry, which has undergone a number of changes in recent years, is made up of three separate classes of railroads.

Class I	Railroads with an annual operating revenue in excess of $50 million.
Class II	Railroads with an annual operating revenue between $10 and $50 million.
Class III	Railroads, including switching and terminal companies, with an annual operating revenue of less than $10 million.

Note: These values are based on 1978 dollars.

The number of Class I railroads, which account for more than 90 percent of the Nation's rail operations, have decreased steadily, from 58 in 1979 to 32 in 1984. Most of this reduction has been brought about by mergers and consolidations. The numbers of Class II and Class III railroads are constantly changing and are not readily available by year. At the end of 1983, there were 18 Class II and some 400 Class III railroads. Between 1977 and 1984, the annual number of train-miles (the movement of one train for a distance of one mile) decreased from about 750 million miles to 593 million miles. The number of freight cars, passenger cars, locomotives, and miles of track being operated also decreased and the number of rail employees decreased by over 30 percent. During the same period, a dramatic increase in net profits was realized by the railroads. Net income of the Class I railroads increased from $400 million in 1977 to more than $2 billion in 1984.

In addition to changes occurring in railroad activity, there have been a number of technological changes. Some of these include new freight car designs, electronic load-shift monitoring systems, computer-assisted dispatching systems, electronic flat-wheel indicating systems, radio telemetry brake indicating systems, and new tracklaying equipment and techniques.

Along with the changes that have occurred in the rail industry, railroad safety has improved dramatically. Improvements have occurred throughout the system and have included all aspects of railroad operations. Much of the improvement has been brought by deregulation.

Deregulation provided the rail industry greater flexibility in abandoning routes and establishing rates, resulting in increased profit margins. The industry has used these increased financial resources to reshape its infrastructure, investing more than $6 billion in track, roadbeds, track structures and equipment, communications and signal equipment from 1979-1983. These investments resulted in a substantial improvement in rail safety. For example, accidents caused by track and equipment failures, which historically accounted for about 40 and 20 percent of the total train accidents respectively, have each been reduced by 67 percent since 1979. The problems previously associated with deferred maintenance have been virtually eliminated.

A tabulation of selected safety statistics for the four-year period preceding deregulation (1977-1980) as compared to the four-year period following (1981-1984) is shown in Table 1. These statistics indicate that rail safety has improved significantly in the last four years. Of particular importance is the reduction in the number of train accidents and in the train accident rate. These two indicators have decreased by 54 and 43 percent respectively. Also of significance is the safety improvement that has occurred in the transportation of hazardous materials. It is important to note that there has not been a single fatality caused by a hazardous materials release since 1980.

Even though there has been dramatic improvement over the four-year period, statistics vary from year-to-year. For example, in 1984 there were more fatalities, injuries and incidents than in 1983. However, the accident rate was lower. Preliminary statistics for the first five months of 1985, compared to the first five months in 1984, as shown in Table 2, suggest that rail safety is improving again in 1985.

Historically, the most serious safety problems involving train operations are rail-highway crossing and trespasser accidents. These two types of events continue to account for about 90 percent of the total fatalities.

TABLE 1

SELECTED SAFETY STATISTICS
1977-1980 VERSUS 1981-1984

ITEM/INDICATOR	1977-1980	1981-1984	% CHANGE
No. Train Accidents	39,830	18,176	-54%
No. Train Incidents	57,374	34,673	-40%
No. Non-train Incidents	212,603	129,104	-39%
No. Train-Miles (Mil.)	2,983.1	2,400.4	-20%
Train Accident Rate 1/	13.4	7.6	-43%
Train Incident Rate 1/	19.2	14.4	-25%
No. Fatalities	6,022	4,723	-22%
No. Injuries	276,784	166,667	-40%
Total Rail Crossing Accidents	49,537	31,485	-36%
Total Rail Crossing Fatalities	3,776	2,559	-32%
Rail Employee Casualties 2/	249,788	147,913	-41%
No. Employees	2,237,751	1,763,631	-21%
Employee Casualty Rate 3/	11.9	9.2	-23%
No. Accidents with Hazardous Materials in Consist	3,553	1,938	-45%
No. Hazard Materials Releases in Accidents	743	408	-45%
No. Trespasser Fatalities 4/	1,680	1,779	+ 6%

Note: Train Accident: A collision, derailment, or other event involving the operation of railroad on-track equipment resulting in damages that exceed the reporting threshold (currently $4,900.00).

Train Incident: Any event involving movement of railroad on-track equipment that results in a death, a reportable injury or illness in which railroad property damage does not exceed the reporting threshold.

Non-Train Incident: An event arising from railroad operations but not from the movement of on-track equipment, which does not exceed the reporting threshold, and results in death, a reportable injury or occupational illness.

1/ Per Million Train-Miles

2/ Includes non-fatal occupational illness.

3/ Per 200,000 man-hours.

4/ Excludes fatalities at rail crossings.

TABLE 2

SELECTED SAFETY STATISTICS
JAN-MAY 1984 VERSUS JAN-MAY 1985

Item/Indicator	Jan.-May 1984	Jan.-May 1985	Percent Change
No. Train Accidents	1,726	1,563	- 9%
No. Train Incidents	3,274	2,975	- 9%
No. Non-Train Incidents	11,363	10,474	- 8%
No. Train Miles (Mil.)	254.1	241.0	- 5%
Train Accident Rate 5/	6.79	6.49	- 4%
Train Incident Rate 5/	12.89	12.34	- 4%
Total No. Fatalities	473	372	-21%
Total No. Injuries	15,055	13,791	- 8%
No. Rail-Hwy. Crossing Accidents	3,227	2,969	- 8%
No. Rail-Hwy. Crossing Fatalities	280	222	-21%
Rail Employee Casualties 6/	12,914	11,801	- 9%
No. Rail Employees	363,860	340,056	- 7%
Employee Casualty Rate 7/	8.2	7.9	- 4%
No. Accidents with Hazardous Materials in Consist	192	196	+ 2%
No. Hazardous Material Releases	30	27	-10%
No. Trespasser Fatalities 8/	153	130	-15%

5/ Per million train-miles.

6/ Includes non-fatal occupational illness.

7/ Per 200,000 man-hours.

8/ Excludes fatalities at rail crossings.

Chapter 2 FRA Safety Mission

The Federal Railroad Safety Act of 1970 directed the Secretary of Transportation to prescribe regulations for all areas of railroad safety. The Act was prompted, in part, by widespread concern over deferred maintenance on several railroads. It also reflected an historical concern for railroad safety problems and a desire to reduce passenger and employee casualties. In addition, the Act authorized FRA to conduct safety-related research and development projects and to evaluate safety regulatory proposals and petitions. Research and testing are accomplished at the Transportation Test Center (TTC) in Pueblo, Colorado. This facility, which has been staffed and managed for FRA by the Association of American Railroads (AAR) since October 1982, is also used by the Canadian government, industry, and the DOT Urban Mass Transportation Administration.

The Federal Railroad Safety Authorization Act of 1980 set the stage for enhanced improvement of rail safety during the 1980s. Section 16(c) of that Act provides:

> "(1) The Secretary of Transportation shall submit to the Congress a system safety plan relating to the activities of the Department of Transportation in carrying out rail safety laws..."

In response to this mandate, FRA completed the System Safety Plan (SSP) in December 1981, which introduced a new approach for monitoring rail safety. This new approach is based on the thesis that safety is best enhanced when government and industry resources are combined in a cooperative rather than adversarial spirit.

A new concept evolving from the SSP was a systems approach to rail safety. Until 1981 and the SSP, FRA's safety inspection program consisted largely of individual, routine, uncoordinated inspections conducted independently by its eight regions. There was no comprehensive, nationally organized approach for assessing and monitoring rail safety. Following completion of the SSP in December 1981, the FRA developed and implemented its first National Inspection Plan (NIP). The NIP, which is updated each year in response to changing conditions, consists of eight regional plans combined into a nationwide inspection plan that is reviewed and approved by the Office of Safety at FRA headquarters. The plan prescribes the number and type of inspections to be performed by each of the regions on various segments of the railroad system such as track, signals, and operating practices. The determination of inspections to be accomplished and their relative priorities are based on analyses of accidents and violations and other safety-related information that is submitted weekly by field inspectors and computerized at FRA Headquarters.

In addition, FRA inspects approximately 92,000 miles of track used by trains carrying passengers and hazardous materials at least once every year.

Each year, FRA also selects certain railroads for intensive reviews called "safety assessments." The determination of railroads to be assessed is based on review and evaluation of each railroad's overall safety record in relation to other railroads in the system. A safety assessment can vary from a complete review of a railroad's entire operation (a "system assessment") to only one or two facets, such as track, motive power and equipment, or to only one division or location of a railroad (a "special assessment"). Selection of railroads for system assessments is done by the Office of Safety at Headquarters, while special assessments are normally determined by the FRA regional offices and approved by the Office of Safety. The primary purpose of an assessment is to improve a railroad's safety record in problem areas.

Other specific areas of FRA safety responsibility discussed in more detail in the following chapters include:

Rulemaking:

The FRA has statutory responsibility for developing and issuing regulations necessary to ensure the safety of the Nation's railroad system. This includes a process for updating or eliminating regulations when industry conditions justify a change.

Enforcement:

The FRA has statutory authority to apply civil penalties for safety violations issued by its team of field safety inspectors. The inspector workforce is also achieving compliance by using a cooperative approach to correcting defects along with the civil penalty approach.

Hazardous Materials:

Responsibility for issuing hazardous materials transportation safety regulations rests with DOT's Research and Special Programs Administration (RSPA). FRA is responsible for inspection and enforcement of transportation of hazardous materials by rail, and for inspecting tank cars for compliance with design standards and other regulations.

Rail-Highway Crossings:

The FRA works jointly with the DOT Federal Highway Administration (FHWA), the States, railroad management, rail labor and suppliers, and the National Safety Council (NSC) in an effort to reduce accidents and fatalities at rail-highway crossings.

> Results have been dramatic over the past seven years, but fatalities at crossings still account for over 50 percent of all railroad fatalities.
>
> **Railroad Employee Safety:**
>
> The FRA and the Occupational Safety and Health Administration (OSHA) have joint responsibility for rail employee safety. FRA concentrates its efforts on employee safety involving train operations, with OSHA responsible for employee safety involving non-train type operations. FRA continues to collect, store, analyze, and publish all employee safety statistics.

The current organizational structure of the Office of Safety requires that all major safety decisions, including enforcement actions, be coordinated and approved at headquarters. This type of centralized structure is aimed at consistent application of rail safety regulations and processing of enforcement actions.

The FRA's safety organization includes an Associate Administrator for Safety who has the primary responsibility for all safety matters within FRA. This organization's role is to protect the public and rail employees by ensuring safe operation of passenger and freight trains. This is accomplished by developing, implementing and monitoring a national program for achieving safe operating, engineering and mechanical practices and by detailed safety analysis of accident, incident, violation, and other safety related information submitted by field inspectors and the railroads and computerized at FRA Headquarters. The Office of Safety consists of the Office of Safety Enforcement, the Office of Safety Analysis, and the Offices of the eight Regional Directors of Railroad Safety.

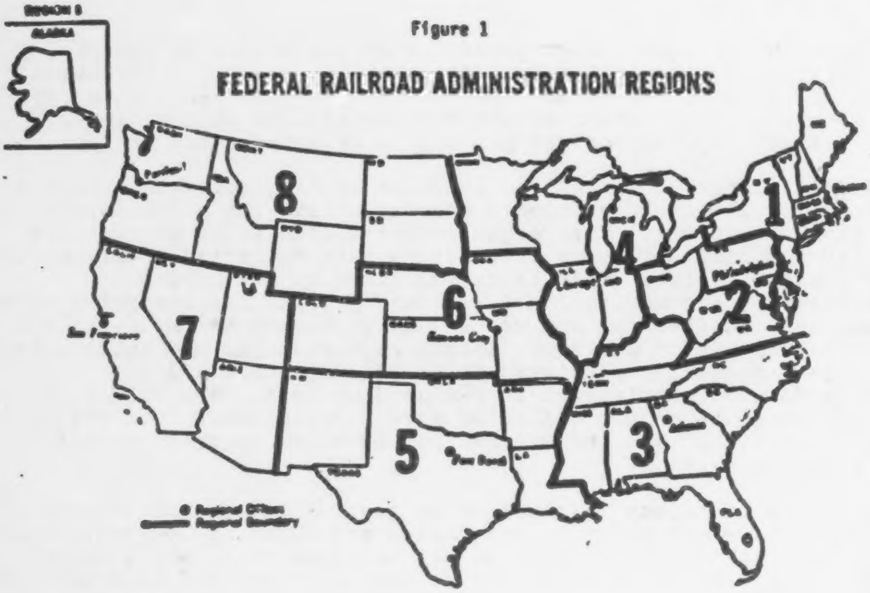
The Office of Safety Enforcement is responsible for administering FRA's enforcement program; developing and establishing policies, rules and standards; processing and handling of safety related complaints; ruling on petitions requesting waivers from standards, rules and regulations; coordinating the efforts of and training FRA and state railroad safety personnel; identifying requirements for research and development projects to enhance railroad safety; and participating in accident investigations.

The Office of Safety Analysis is responsible for designing and maintaining FRA's safety data systems; conducting safety analyses of relevant railroad operational data; directing and administering safety-related aspects of the rail-highway grade crossing program; developing long range safety goals and strategies for their resolution; assisting in monitoring the state rail safety program; and conducting regulatory evaluations.

The Regional Directors of Railroad Safety are responsible for developing and implementing regional safety programs; coordinating investigations involving accidents, special investigations, violations and complaints; and ensuring dissemination and enforcement of railroad safety rules, regulations and standards, including hazardous material regulations and standards. The eight Regional Directors report to the Associate Administrator for Safety. Their regions and their geographical coverage are shown in Figure 1. The safety organization, through its regional offices and safety inspectors, is responsible for enforcing federal railroad safety regulations and standards.

Figure 1

FEDERAL RAILROAD ADMINISTRATION REGIONS


REGION 8
ALASKA
1
2
3
4
5
6
7
8
Portland
San Francisco
Kansas City
Fort Worth
Chicago
Philadelphia
Atlanta
● Regional Offices
—— Regional Boundary

Chapter 3 Safety Goals

As part of the System Safety Plan of 1981, FRA selected five areas as priority elements of its safety program and set as a goal a 20 percent improvement in each of them over a five-year period. The areas selected for improvement were:

hazardous materials release rate;
passenger train fatality rate;
railroad employee fatality rate;
fatality rate at grade crossings; and
trespasser fatality rate.

Hazardous materials and passenger train safety were selected because of their potential for a catastrophic occurrence. Railroad employee fatalities were selected because FRA has statutory responsibility for ensuring safety of rail employees as well as the general public. The other areas were selected because they are the most serious safety problems in the rail industry. Rail crossing and trespasser fatalities historically account for 90 percent of all fatalities.

Progress in achieving the 20 percent goal has been mixed. Comparing the first four years after the System Safety Plan (1981-1984) to the previous period (1976-1980) yields the following results:

- The hazardous materials release rate has decreased by more than 36 percent;
- the passenger train fatality rate has decreased about 5 percent;
- the railroad employee fatality rate has decreased by more than 20 percent;
- the fatality rate at grade crossings has decreased by almost 24 percent;
- the trespasser fatality rate has increased by about 35 percent.

In 1986, FRA will be setting goals for the next five-year period. Given the experience of the first five years, the Task Force believes that rather than setting a 20 percent across-the-board target, FRA should select distinct goals for each priority area based on an analysis of what can be achieved through specific program activities. The goals should then be reflected in the various elements of FRA's safety program, such as the National Inspection Plan and the regulatory agenda.

Since the achievement of goals is largely dependent on the performance of individual regions, FRA should develop and implement an information system that would permit continuous monitoring and tracking of regional performance in relation to the goals.

Recommendations:

1. That FRA select safety goals for the next five-year period based on an analysis of what can be achieved through specific program activities.

2. That FRA develop and implement an information system that would permit continuous monitoring and tracking of individual regional performance toward the attainment of its safety goals.

Chapter 4 National Inspection Plan

Prior to 1981, FRA's approach to safety inspection consisted largely of individual, routine, uncoordinated inspections conducted independently by each of its eight regions. There was no nationally coordinated approach for assessing and monitoring rail safety. In 1981 FRA completed a System Safety Plan (SSP) which introduced a new systems approach for monitoring rail safety. Following completion of the SSP, FRA developed and implemented the first of its annual National Inspection Plans (NIP). The NIP is a document which includes the number and type of inspections to be accomplished by the regions throughout the year, as well as FRA's plans for implementing intensive reviews called "safety assessments."

From 1981 to 1984 FRA conducted 42 assessments on 20 different railroads. Five railroads were assessed once, ten were assessed twice, three were assessed three times, and two were assessed four different times. The number of "system" and "special" assessments conducted on the 32 Class I railroads in operation during the 1981-1984 period are shown in Table 3.

TABLE 3

Calendar Year	No. Class I Railroads	System Assessments	Special Assessments	Total Assessments
1981	32	0	12	12
1982	32	4	6	10
1983	32	1	8	9
1984	32	3	8	11
Totals		8	34	42

As shown in Table 3, there were five system assessments performed in 1982 and 1983. A comparison of the safety records for these railroads for the year prior to the assessment and the year following the assessment indicated that the train accident rate and the train incident rate decreased on four of the railroads assessed. The number of non-train incidents dropped on all five railroads. Between 1981 and 1983 there were 26 special assessments. A similar comparison of these railroads indicated that the train accident rate decreased on 22 of the railroads assessed, the train incident rate dropped on 19 and the number of non-train incidents was reduced on 21 railroads. The 1984 assessments were not reviewed because statistics for the year following the assessments are not yet available.

A comparison of the number of accidents and incidents by region from 1981 through 1984 indicated that the number of train accidents decreased by a minimum of 17 percent. The number of train incidents and non-train incidents were both reduced by a minimum of 11 percent. A review of train accidents by cause factor showed that the number of accidents were substantially reduced in all of the eight regions, with the exception of track caused accidents which increased every year since 1981 in one region. The reason for this increase could not be determined.

These comparisons show that there has been a substantial improvement in rail safety since implementation of the systems approach. However, the extent to which this improvement was actually brought about by that approach cannot be accurately determined. Some of the factors which may also have contributed to this improvement include new equipment, changes in traffic levels and types of operations, and increased number of inspectors. Notwithstanding the impact of these factors, the overall improvement in safety that has occurred indicates that the systems approach is sound and is being effectively applied by FRA. In this regard, rail management in it's meeting with the Task Force, while concerned about the additional expenditures of resources that are required to respond to findings generated by assessments, stated that the assessment approach has had a positive effect on improving rail safety.

In the course of this review, the Task Force noted that the methodology used for the selection of carriers to be assessed and for determining priorities and number and types of inspections to be performed has not been reevaluated since the inception of the NIP. In view of this, and since the NIP represents the primary management tool for monitoring rail safety, the methodology should be reviewed and updated, if necessary. In addition, the Task Force noted that the NIP is still evolving from a compendium of eight regional plans into a truly integrated national plan.

The Inspector General report of October 9, 1984 (Report No. AS-FR-5-001) found that FRA, in many cases, does not conduct follow-up inspections and that lengthy delays are often involved in issuing final assessment reports. The Task Force review of this process tends to support this finding, to the extent that a formalized follow-up report was not prepared in all cases. Follow-up inspections were performed to ensure compliance, but they were initially accomplished in the form of routine inspections, as opposed to a formalized review process. This was particularly true in the first two years following implementation of the assessment approach. Regarding delays in issuance of final assessment reports, FRA has already taken steps to modify existing procedures and guidelines to correct this deficiency. These revised guidelines, which should be completed sometime in 1985, will also provide additional guidance on scheduling and conducting audits and assessments.

Recommendation:

② 1. That FRA initiate a review of the methodology of the NIP, including measures to mold the regional submissions into a fully integrated national plan, to ensure its continued effectiveness.

Chapter 5 Inspector Workforce

Nearly one-half the Federal Railroad Administration's employees are railroad safety inspectors. The FRA had approximately 679 authorized positions in FY-1985. Sixty-five percent, or 445, of these positions are under the Associate Administrator for Safety. Of these, about 66 are in Washington Headquarters and 379 are field positions spread among FRA's eight regional offices. The 379 field positions include 325 authorized safety inspectors. The remaining positions are supervisory and clerical.

FRA's safety inspector workforce is divided into five different disciplines, each requiring distinct qualifications and experience: track, motive power and equipment, signal and train control, operating practices, and hazardous materials. Virtually all of FRA's inspectors come from the railroad industry and have had extensive experience in their respective disciplines. The qualification requirements for each discipline are specialized to the extent that there is little movement of inspectors from one discipline to another.

In past years, FRA has been from 30 to 50 inspectors short of authorized staffing because of difficulties in attracting and hiring qualified and experienced personnel. However, Administrator Riley has made hiring a priority and the FRA reached an all-time high of 322 on board this year.

A State Participation Program for safety inspectors was established in 1970 providing states an incentive to participate in FRA's safety enforcement program. State inspectors are authorized to work independently in all disciplines except hazardous materials. At present, 32 states receive funding support and employ 103 inspectors to complement FRA's inspectors. Federal and state inspectors divide regional inspection responsibilities geographically and rotate these responsibilities within the region from year-to-year.

DOT has submitted a cost reduction proposal to terminate federal funding for the state rail safety grant program. Based on a survey FRA estimates that most states (about 27 out of 32) would continue to participate in the program retaining 70 of the current 103 inspectors without federal matching funds. At a cost of $3.5 million to fund the current level of 103 inspectors, FRA estimates that the 33 inspectors who might not be picked up by the states would result in a savings of about $106,000 per inspector. FRA believes railroad safety will not be compromised in the process, and that the effective working relationship established between the states and FRA will continue.

The FRA and state inspectors monitor the railroads' inspection activities, but the railroads have the major responsibility for detecting defects. Each carrier has its own inspectors; safety program, including safety rules and regulations; and records to document inspections and actions taken in response to problem areas. Railroad inspections, both by railroad policy and by FRA regulation, are much more frequent than FRA inspections. For example, the railroads must inspect all passenger track at least twice a week, while FRA's goal is to inspect all passenger track at least once a year. FRA safety regulations ensure uniformity and standardization of inspection procedures whether by railroad, state, or federal inspector.

FRA inspectors in each of the five disciplines spend time in activities other than routine inspections. Their time is devoted to the following primary activities:

> Inspections - Regular inspections, quantified based on goals established each year in the National Inspection Plan (NIP). For example, a 1985 goal for track was to inspect over 330,000 miles of mainline and yard track. This function usually takes between 50 percent to 60 percent of each inspector's time.
>
> Complaints and Investigations - Initiated by members of the public, including railroad employees and unions. FRA indicates that complaints are increasing, and that inspectors attempt to investigate all safety-related complaints, which have numbered about 800 during each of the past two years. Complaints take about 12 percent to 13 percent of each inspector's time.
>
> Accident Investigations - FRA estimates it will investigate 400 accidents (including hazardous materials incidents) during 1985. Accident investigations average about 8 percent of the inspector's time and are assigned from Washington.
>
> Special Investigations - The railroads apply for waivers and exemptions from a portion of FRA's regulations. FRA anticipates investigating approximately 330 such applications during 1985. These investigations involve both the FRA field inspector (state inspectors do not handle waivers) and the attorneys in the Chief Counsel's Safety Division. Special investigations also include system and special assessments. FRA Headquarters usually plans for three system assessments per year that are multi-regional in scope, and the regions conduct special assessments in their surveillance of the railroads. These activities usually take about 16 to 18 percent of each inspector's time.

Inspector training is accomplished in a variety of ways. Inspectors receive periodic training within the regions from training specialists, keeping them up to date on regulatory changes. FRA Headquarters provides each inspector with a manual containing interpretive information on the safety regulations and issues policy bulletins for field inspectors. Classroom training is provided at FRA's training facility at Oklahoma City. Finally, regional conferences are held every two years.

FRA has no formal plan or procedure for the distribution of the safety inspector workforce among the regions to ensure maximum flexibility and effectiveness. For example, there is no written plan for shifting track inspectors to locations where track-caused accidents are prevalent. Past experience and regional requests for inspector positions have generally been the determining factors. The FRA's allocation of its workforce among the five disciplines and eight regions has changed little since 1981, (figures were not available from FRA before 1980) even though the inspector workforce has grown from 247 to 322 during that period. The percentage of the total inspector workforce allocated to each region has varied no more than two percent over that period. A comparison of the number and percentage of inspectors by region between April 1985 and 1981 is shown in Table 4.

TABLE 4

Region	No. of Inspectors		Percent of Total	
	1981	April 1985	1981	1985
Boston	30	35	12.1%	11.2%
Philadelphia	46	52	18.6%	16.6%
Atlanta	36	46	14.6%	14.7%
Chicago	32	45	12.9%	14.4%
Fort Worth	33	42	13.3%	13.4%
Kansas City	35	42	14.2%	13.4%
San Francisco	16	24	6.5%	7.7%
Portland	19	27	7.7%	8.6%
Total	247	313	100%	100%

The percentage of the total inspector workforce by discipline has varied less than 5 percent over the same period, as indicated by the following figures in Table 5 comparing April 1985 to 1981.

TABLE 5

Discipline	No. of Inspectors		Percent of Total	
	1981	April 1985	1981	1985
Track	68	77	27.5%	24.6%
Signal	27	41	10.9%	13.0%
Motive Power & Equipment	92	103	37.2%	32.9%
Operating Practices	37	57	15.0%	18.2%
Hazardous Materials	23	35	9.3%	11.3%
Total	247	313	100%	100%

The Inspector General (OIG) reviewed the allocation of FRA inspector resources. The OIG report (October 9, 1984; No. AS-FR-5-001) included the following statement: "Without periodic assessment of the deployment of safety personnel based on national priorities, there was no systematic method for objectively identifying and quantifying inspection requirements for each region and allocating inspector resources based on nationwide requirements."

The Task Force study of the allocation of inspectors among the five disciplines shows that the largest percentage of inspectors (32.9 percent) are in the motive power and equipment (MP&E) discipline, which is the area with the lowest percentage of accidents (17 percent of the total accidents, versus 38 percent for track). Additionally, only 18.2 percent of the inspector workforce is in the operating practices (human factors) discipline where 28 percent of accident cause is attributed.

A comparison of train accidents by cause and by region indicates that the percentage of accidents by individual cause has remained fairly stable. An exception is track-caused accidents in Region 7, which have increased almost 43 percent from 1981-1984. The four track inspectors in Region 7 represent 5.2 percent of FRA's total 77 track inspector workforce. Conversely, the average percentage of track-caused accidents for Region 3 decreased 54 percent for the same period. The current track inspector workforce in Region 3 numbers 13, or nearly 17 percent of the total, which is the single largest regional total for track inspectors. A number of variables affect the process of allocating the inspector workforce, such as complexity in determining risk and the state inspector workforce but there remains a need for FRA to analyze systematically indicators for possible redeployment of their safety inspectors. FRA has recently begun such an analysis at the suggestion of the Safety Task Force.

Recommendation:

1. That FRA expedite development and implementation of a nationwide inspector allocation plan based on accident rates and projections of future risk.

Chapter 6 Enforcement

An effective enforcement program is essential to ensure that FRA obtains compliance with its safety regulations. FRA's statutory authority for enforcement is based primarily on the Federal Railroad Safety Act of 1970 and the 1974 Hazardous Materials Act, which provides for enforcement by the appropriate DOT operating administrations.

Prior to 1981, the FRA's approach to enforcing railroad safety was to encourage safe operations through imposing fines when inspections showed that safety regulations had been violated. The FRA's December 1981 System Safety Plan represented a shift in emphasis toward a more cooperative working arrangement with the railroads. This approach involves the attainment of compliance with rail safety regulations through consultation and joint efforts, where defects are pointed out by the inspector and corrective action requested. When the cooperative approach between FRA and state safety inspectors and industry personnel fails to achieve safe railroad operations, the inspectors turn to the civil penalty.

When an inspector observes a deviation from an FRA standard (a defect), he may file an inspection report with a carrier or shipper with the expectation that the defect will be corrected. Rail labor representatives stated that the railroads do not always correct defects discovered by FRA inspectors and that FRA does not do an adequate follow-up job to determine whether corrections have been made. They pointed out that a defective freight car could be moved from a rail yard and an FRA inspector could not reinspect the car because it is likely to be well out of his district. No tracking system exists to attempt an inspection in the next region. Although it appears this particular type of incident cannot be checked, all defects discovered during FRA inspections are forwarded to Washington Headquarters and computerized. Even though correction reports from railroads are not required, a review of this data indicates that over 75 percent of these defects were verified as being corrected by follow-up reports submitted voluntarily by the railroads.

In those instances when a penalty is appropriate, the inspector prepares a "violation report" recommending assessment of a civil penalty. The violation report is reviewed by the regional office and forwarded to the Chief Counsel's Safety Division in Washington Headquarters for action. A violation report can contain from one to 50 or more individual violations. The Safety Division reviews each report for legal sufficiency, adequacy of evidence and consistency with enforcement policy. Similar violation reports are aggregated into a single case for transmittal to the railroad under a penalty demand letter, which initiates the settlement process.

As shown in the Table 6, the number of violation reports received from FRA and state inspectors declined from October 1980 until FY 1984, when they began to increase. Total violation reports received for FY 1984 were the highest since FY 1981. The total for the first ten months of FY 1985 exceeds FY 1984 by over 29 percent.

TABLE 6
Violation Reports

	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985
October	994	500	74	240	346
November	786	290	57	192	289
December	875	381	74	205	347
January	786	282	143	192	519
February	646	139	72	250	361
March	691	291	398	282	413
April	684	201	150	319	433
May	723	237	147	297	419
June	468	338	162	284	612
July	450	156	193	391	598
August	394	150	252	369	
September	544	74	266	329	
	8,041	3,039	1,988	3,350	4,337*

*Current as of July 1985

FRA civil penalty settlements vary widely over time and bear little direct relation to safety trends. For example, an individual settlement executed in one year may well include violations that occurred in four separate years. In FY 1984, FRA collected $3.7 million in civil penalties, more than it has collected in any year since FY 1980. The total collected through July with two months to go in FY 1985 already exceeds FY 1984 by over 60 percent. A tabulation of civil penalties collected is shown in Table 7.

Table 7
Civil Penalty Settlements

FY 1977	$ 3,465,627
FY 1978	$ 7,543,439
FY 1979	$ 2,058,611
FY 1980	$15,332,776
FY 1981	$ 1,329,697
FY 1982	$ 2,026,882
FY 1983	$ 2,408,440
FY 1984	$ 3,719,765
FY 1985 thru July 1985	$ 5,969,250

The Safety Division has set goals to reduce the average time violations spend in that office before transmittal. Since 1982, the average time was reduced from nearly 300 days to a low of 114 days during FY 1984. Even though that average time has gone up somewhat along with the number of violations received during the past year, emphasis continues on reducing transmittal time without sacrificing quality.

Two other noteworthy enforcement improvements include:

- Installation of a computer based violation tracking system.
- Reduction of settlement backlogs. As of March 1985 only $4.2 million in current safety claims were outstanding compared with the $16 million outstanding in September 1984.

The review of FRA's enforcement program indicated impressive improvement over the past few years. The Task Force believes that FRA's consultative effort is a good approach that is effective and working well in tandem with judicious use of civil penalty sanctions to improve compliance. Along with the consultative approach, FRA's violation reports and civil penalty collections also have been increasing, as indicated in Tables 6 and 7.

Recommendation:

③ 1. That FRA consider developing a more systematic procedure for verifying that defects have been corrected.

Chapter 7 Rulemaking

One of FRA's primary responsibilities involves issuing safety regulations. The primary source of this rulemaking authority is the Federal Railroad Safety Act of 1970 (45 U.S.C. Section 431 et seq.) (the 1970 Act). Proposals for new regulatory action come from the Congress, the National Transportation Safety Board (NTSB), the Association of American Railroads (AAR), railroad labor, as well as the FRA itself.

FRA identified the following areas, which also incorporate several NTSB recommendations, for primary rulemaking or safety inquiries during 1985.

- The use of radio telemetry in lieu of visual observations of brake operations and rear-of-train marker devices;
- expansion of the class of employee eligible to inpect rear-of-train marker devices;
- protection of railroad inspectors from moving equipment;
- the placement of cars containing volatile hazardous materials as the last car in a train;
- radio communications; and
- crew safety in locomotives.

FRA's Office of Safety maintains a biweekly "List of Reportable Action Items" providing an up-to-date status report for tracking all primary rulemaking and regulatory projects. All rulemaking is done by FRA's Washington Headquarters safety and legal offices, helping achieve uniformity and consistency in its rulemaking process from a rule's inception, draft and final rule stages through its interpretation and application by all FRA regions. The uniformity of interpretation and application appears to be facilitated to a great extent by FRA's nationwide training seminars on new regulations for inspectors, rail management, and rail labor.

FRA's regulatory process under the 1970 Act is governed by a provision requiring that a rulemaking proceeding be completed within twelve months of its initiation, (publication of a Notice of Proposed Rulemaking (NPRM)). A Task Force review of significant rulemaking proceedings completed since 1979 shows that in all cases except one rules issued under the Act of 1970 were timely, taking less than twelve months between publication of the NPRM and issuance of the final rule. The complex drug and alcohol rule that became effective August 1, 1985 took 14 months.

On May 8, 1978, FRA announced a General Safety Inquiry for the purpose of evaluating and improving its safety regulatory program. It resulted in an ongoing process of rulemaking proceedings to issue new rules where needed and to amend existing rules to ensure their continued effectiveness and relevance. Since that time, FRA has conducted 16 significant rulemakings, either establishing new rules or resulting in substantial amendments to existing rules.

During Task Force meetings with interested railroad groups, comments were made that some FRA rules were obsolete and needed to be revised. Although this appears to be true, FRA does have a process in place to address this concern.

The FRA has processed a substantial number of petitions for waiver each year since 1981. Table 8 gives a breakdown over the past four years.

TABLE 8

WAIVER PETITIONS RECEIVED BY FRA

	1984	1983	1982	1981
Signal Systems	165	249	236	207
Track Safety Standards	10	7	1	6
Railroad Operating Rules	24	24	30	27
Motive Power&Equip. Rules	91(38*)	93(69*)	51(31*)	90(50*)
Totals	290	373	318	330

*Safety Glazing Standards

As shown in the Table, in 1982 as many as 74 percent of the waivers were in the signal system area. FRA has completely revised Parts 235 and 236 of the signal systems regulations. Signal system waiver petitions received in 1984 were down substantially from the previous year and are expected to continue to diminish. Consistency and uniformity in granting waivers does not seem to be a problem since all are processed through the same office in the Washington Headquarters.

The Safety Task Force concluded that FRA generally has been timely and responsive in handling NTSB safety recommendtions. FRA is proceeding on four of the five safety recommendations the NTSB identified to the Task Force as its most important open recommendations. FRA responded to NTSB that the fifth recommendation should be closed out. The five recommendations are:

83-102 - Study protected area in locomotive cab.
84-010 - Freight Car Standards - Maintenance-of-Way Cars.
84-030 - Communicate signal aspects - Radio.
84-031 - Alerting device on locomotives.
84-046 - Study passenger car interiors and issue guidelines on seats and luggage (recommended to be closed).

FRA has made a special effort under Administrator Riley over the past two years to reduce the overall backlog of NTSB recommendations. The NTSB issued 305 safety recommendations to the FRA between 1968 and June 1985. At the end of 1983, 82 recommendations were open. By August 1985, FRA had reduced that total to 49.

Earlier this year, FRA's regulatory program was reviewed by the Inspector General (IG), in Report No. AS-FR-5-016 for the purpose of evaluating rulemaking activities and determining whether established requirements were adhered to. The IG covered rulemaking activities from 1982 through 1984, and found that FRA's rulemaking process complied with statutory procedural requirements, that rulemaking efforts were kept on course, and that final determinations were made in a timely manner. The IG noted that since 1981, 28 of 29 rulemaking actions were safety related, which has led to a close and effective working relationship between the Office of Chief Counsel Safety Division and the Office of Safety.

The IG analysis of FRA PERT charts disclosed that 94 percent of the milestone dates were met. The only criticism was an observation of a lack of written procedures to guide interoffice coordination efforts and a suggestion that "FRA consider defining the responsibilities and coordination requirements of the Office of Safety Office of Chief Counsel Safety Division in writing." This IG Report and its positive findings are consistent with the findings of the Safety Review Task Force.

The Safety Review Task Force concludes that the FRA has been doing a good job in the rulemaking area and has no recommendations.

Chapter 8 Safety Statistics

The FRA has made extensive application of automated data processing (ADP) systems to store and analyze the voluminous safety statistics that are compiled and sent in by the railroads and FRA's inspector workforce. The following four data information systems are currently being used by FRA:

The Railroad Accident/Incident Reporting System (RAIRS): This system contains information concerning collisions, derailments, fatalities, injuries, rail-highway crossings and similar events. It also processes railroad operational data, such as train-miles operated and employee-hours, that are used in the calculation of accident/incident frequency rates. This information is supplied monthly to FRA by the railroads. Currently this system contains approximately 700,000 records beginning with calendar year 1975, and is updated monthly by contractor personnel. The information is used in the annual Accident/Incident Bulletin, which summarizes reportable accidents and incidents; for doing statistical analyses in support of annual National Inspection Plan (NIP) program emphasis; and for data requests. Data from this system are also used in compiling the Annual Rail-Highway Crossing Accident/Incident and Inventory Bulletin.

The Railroad Inspection Reporting System (RIRS): This system is used to record a railroad's adherence to various safety standards. It covers inspections performed by federal and state safety inspectors and contains about 300,000 records starting with calendar year 1974. The information is submitted weekly by the regional offices to contractor personnel for weekly updating of the database. The data from this system are used by FRA in performing analysis of inspection activities and results, in support of the NIP, in responding to data requests, and in support of rulemaking activities.

The Grade Crossing Inventory System (GCIS): This system collects and updates information concerning all rail-highway crossing sites in the Nation. It contains data about the physical characteristics of a site, as well as the volume of rail and highway traffic at that location. This information is used in hazard prediction models to identify which crossings have the greatest potential for accidents, thereby providing a means of prioritizing the improvement of crossing protection. The information is supplied voluntarily by the railroads and states.

The Risk Assessment and Control Program (RACP): This is a new system designed to graphically display railroad networks, commodity flows (including hazardous materials), inspections, accidents, population areas, and geographical data. Areas of the network can be enlarged to show detail and display

> anomalies, and different data bases can be combined to produce a composite picture of the possible risks on a section of track. In this way, an FRA inspector or district chief can analyze the area and allocate inspector time based on agency priorities and goals. The same technique can be used for railroad assessments and accident history information. The prototype of this system is currently being tested as part of its ongoing development.

An evaluation of these data systems indicates that they adequately support analyses and contain all the necessary features to meet the needs of all users. The procedures currently being used to ensure data accuracy and consistency are effective. However, it was noted that these systems are not being used directly by the regions. The regions, when requiring information from these systems, usually request the data from Headquarters staff. In an effort to encourage them to use these systems directly, the Office of Safety has conducted a number of training sessions with the regions. Plans are underway to provide interactive capability at the regional level. Since the effective monitoring of safety is directly dependent on data usage and availability, these two efforts should continue to be given high priority.

Rail management officials voiced concern over the current requirement for reporting employee injury statistics. Their primary concern was the extent to which insignificant and non-disabling injuries and illnesses were reported, causing unfavorable safety comparisons between the rail industry and other industries. FRA has a statutory duty to collect statistics on rail employee injuries, including many considered minor and non-disabling. The types of injuries to be reported are defined by OSHA and are consistent with those being reported to OSHA by other transportation modes. Rail labor officials expressed concern that the use of train accident and incident categories could lead to misinterpretation of the true rail safety picture and that total fatalities and injuries are better safety indicators.

Historically, train accidents account for approximately five percent of the total fatalities and about two percent of injuries. Train incidents account for about 90 percent of the fatalities and 20 percent of the injuries; non-train incidents account for five percent of the fatalities and about 78 percent of the injuries. Separate statistics are compiled on rail-highway crossing accidents. However, rail highway accidents are also identified as either a train accident or train incident, depending on the cost of damages. This type of data separation, while useful for analytical purposes, could give the perception of double counting.

FRA should develop and implement an improved data presentation format that clearly shows the total number of fatalities and injuries occurring in the entire rail industry. This new format should also include a provision that would show the distribution of fatalities and injuries by type of event (train accidents, train incidents, and non-train incidents) and clearly identify rail-highway crossing accidents as a subset of train accidents or train incidents.

As noted earlier, the Grade Crossing Inventory System (GCIS) is solely dependent on the voluntary submission of information. This type of system is of questionable value because of the possible lack of up-to-date information. Because safety at rail-highway crossings has been and continues to be the most serious safety problem facing the Nation's railroads, FRA, in cooperation with the states and the rail industry, should initiate special efforts to encourage accurate and timely submittal of information to support this system.

Recommendations:

⑥ 1. That FRA continue its efforts to encourage the regions to use on-line capability for obtaining safety data and the development of interactive capability for data submission.

⑦ 2. That FRA develop and implement an improved format for the presentation of safety statistics. The format should clearly show the total number of fatalities and injuries and identify the types of events with which the fatalities and injuries are associated.

⑧ 3. That FRA, in cooperation with the states and rail industry, initiate special efforts to encourage the timely submission of information to support the voluntary Grade Crossing Inventory Data System.

Chapter 9 Hazardous Materials

The responsibility for developing hazardous materials transportation safety regulations rests with DOT's Research and Special Programs Administration (RSPA). Once the regulations are issued, surveillance and enforcement become the responsibility of the appropriate modal administration. FRA is responsible for inspection and enforcement functions relating to the transportation of hazardous materials by rail and for inspecting tank cars to determine compliance with design standards and with regulations concerning proper maintenance, marking, placarding, handling, and loading of such cars.

The safety record in the hazardous materials area has been impressive. The number of train accidents with a hazardous materials release decreased by 45 percent during the period 1981-1984, as compared to 1977-1980. Also, there has not been a single fatality resulting from the release of hazardous materials in a train accident since 1980. These improvements are due largely to recent regulatory changes.

Hazardous Materials Research and Development

The 1970 Act contained a mandate that research and development be carried out to support the goals of improving railroad safety and reducing accidents. FRA's current R&D plan for the hazardous materials area states: "The development and validation of protective systems for the largest tank cars and the most volatile commodities has led to regulatory mandates and car retrofits that produced dramatic improvements in the safe rail transport of the most threatening hazardous materials."

In FY 1986, FRA hazardous materials R&D emphasis will be on safety issues associated with:

- specific commodities usually carried in low pressure tank cars;
- spent nuclear fuel when transported in railroad cask;
- tank car design improvements;
- intermodal shipment of hazardous materials; and
- an emergency response management system.

Research is also anticipated in the areas of identifying other hazardous materials and the nature of their threat, on the loading and unloading of hazardous materials, and on investigating techniques for safer handling of hazardous materials at an accident site.

Hazardous Materials Tank Cars

Regulations concerning the design of hazardous materials tank cars contain detailed requirements on dimensions, construction, safety features and testing procedures to be used in building various types of tank cars. These regulations delegate approval authority to the Committee on Tank Cars of the Association of American Railroads (AAR). The Committee in carrying out this responsibility reviews and approves a builder's application to ensure it is in compliance with the Department's regulations. Before the manufacturer can build or repair tank cars, the car design must be certified by the Committee, a process that involves physical examination of a prototype car by a Committee representative. Once a tank car is actually built, the manufacturer must certify that it was built in compliance with the Department's regulations.

Following the discovery of an improperly attached railroad tank car bracket problem involving some 8000 cars, the Task Force met with the FRA to discuss various alternatives for achieving greater FRA involvement in the design and construction of new tank cars and for developing comprehensive inspection procedures for existing tank cars. Subsequently RSPA, FRA and the Task Force met with the Tank Car Committee to discuss these issues. One concern noted by the Task Force was that neither FRA nor the Tank Car Committee had a provision for monitoring construction of new tank cars to assure that they conform to the approved design.

As a result, FRA will or has, initiated:

- Closer liaison with the AAR Tank Car Committee;
- Procedures assuring improved oversight and inspection of rail tank car construction; and
- Procedures for spot checking existing rail cars.

Hazardous Materials Storage in Rail Cars

Concern has been expressed on various occasions over increased use of leased sidings to store hazardous materials for extended periods and the potential danger to public health and the environment. FRA indicates that storage of hazardous materials at various locations along rail transportation routes has been a common practice for the past 20 years. Such storage may occur at a shipper's facility prior to transportation, at the consignee's facility prior to unloading, or some interim point during shipment. Regulations issued under the Hazardous Materials Transportation Act generally require railroads to forward rail shipments of hazardous materials within 48 hours after acceptance or receipt at any rail yard, transfer station or interchange point. At the same time, many of the Hazardous Materials Regulations contemplate that interim storage is a common occurrence, except under certain unique circumstances.

Basically, hazardous materials shipments must be moved quickly to the shipping destination, where storage is permissible, once the shipment has arrived at the destination. With this exception, storage of hazardous materials is not regulated in any detailed way.

In order to determine whether such storage warrants more detailed regulation, FRA's Office of Safety Enforcement began a survey of storage sites in June 1984, compiling data on hundreds of locations across the country. FRA has concluded from the historical record and the results of the survey that continuation of interim storage does not appear to pose unreasonable safety risks. FRA found that leaks have occurred at less than five percent of the sites during the past several years and that all such leaks have been minor. These releases caused no deaths or serious injuries and, in some of the cases, were the result of causes unrelated to storage of the materials, such as loose fittings.

The rail safety and hazardous materials laws provide FRA with ample authority to address an imminently dangerous situation that may arise in connection with the storage of hazardous materials. FRA indicates that such a situation is unlikely to go unnoticed because FRA inspectors now monitor and inspect the major storage sites on a regular basis using a hazard priority system established from the survey data.

Emergency Response

FRA's Office of Safety Enforcement has been conducting a survey of the Nation's railroads to determine whether they (1) have published emergency response plans; (2) have a plan, but not printed; or (3) have no plan. Railroads having a printed plan were asked to furnish FRA with a copy. Some 59 have plans, out of 74 contacted.

FRA is also making a special effort to identify major rail yards and collect emergency response plans covering those yards.

The Office of Safety Enforcement is now proposing to discontinue its emergency response survey and use two similar surveys to be developed under contract to FRA's Office of Research and Development. The first contract is with the Association of American Railroads for a survey of the status of the railroad emergency response plan, and a second is being prepared with the Short Line Railroads for a similar survey. FRA is also sponsoring a joint study with the Air Force and the Association of American Railroads, with one result a specialized manual for responding to hazardous materials accidents.

Recommendations:

⑨ 1. That FRA, in cooperation with RSPA, establish a closer liaison with the AAR Tank Car Committee during the rail tank car approval and design process; develop procedures to assure improved oversight of rail tank car construction and study the feasibility of adopting the construction inspection requirements called for in DOT's recently issued NPRM HM-183 and HM-183A, Requirements for Cargo Tanks; and establish procedures for spot checking existing rail tank cars to assure proper construction.

⑩ 2. That FRA expedite development and issuance of an emergency response manual or guide expected to result from the present study with the AAR and the Air Force.

Chapter 10 Rail-Highway Crossings and Trespassers

FRA works with the Federal Highway Administration (FHWA), the states, the railroad industry, the National Safety Council (NSC), and others to reduce accidents and fatalities at rail-highway crossings. The results have been dramatic, with the number of rail-highway crossing accidents and fatalities declining between 1977 and 1983 by about 45 and 42 percent respectively, as shown in Table 9.

TABLE 9
RAIL/HIGHWAY CROSSING ACCIDENTS AND FATALITIES
1977 - 1984

Year	No. of Rail/High. Crossing Accidents	Total Fatalities Involving Train Operations	No. of Fatalities at Rail Crossings	Percent Fatalities at Rail Crossings
1977	13,101	1,530	996	65.1
1978	13,316	1,646	1,064	64.7
1979	12,509	1,429	883	61.8
1980	10,611	1,417	833	58.8
1981	9,295	1,284	728	56.7
1982	7,748	1,119	607	54.2
1983	7,161	1,073	575	53.6
1984	7,281	1,247	649	52.0

During 1984 there was an increase in these fatalities for the first time since 1978. However, the long-term improvement in rail-highway crossing safety is significant and has been attributed to several efforts.

Funding: The 1973 Highway Safety Act, Section 203, provides funding for rail-highway crossing safety improvements. Through 1986, about $2 billion will have been allocated to the states for crossing safety improvements. About 20,000 public crossings have already been equipped with train-activated warning devices.

Operation Lifesaver: This is a public information and education program operated by the National Safety Council to reduce accidents, fatalities and injuries at rail-highway crossings. The FRA has at least one Operation Lifesaver coordinator in each of its eight regions. In 1985, FRA inspectors will participate in over 1200 Operation Lifesaver presentations. At these presentations, FRA personnel inform schools, civic groups and other audiences about the dangers at rail crossings.

Crossing Inventory/Accident Reports: Since 1976, FRA has processed and analyzed demographic and accident data provided by the states and railroads on all U.S. rail-highway crossings. The information is used to assess safety trends and perform risk analyses to assist in funding prioritization.

In spite of the improvement in the number of rail-highway crossing fatalities since 1977, about 52 percent of fatalities caused by railroad operations still occur at rail-highway crossings. Today there are over 200,000 public, at-grade motor vehicle rail-highway crossings. Just over one-quarter (53,810) of these public crossings have automated train-activated warning devices, flashing lights or flashing lights with gates. About one-half of the grade crossing fatalities occur at the approximately 150,000 grade crossings not equipped with warning devices.

In July, Secretary Dole announced a new program to help states improve motorists' safety at the thousands of low-volume, rail-highway crossings not equipped with automatic warning devices. Under the Rail Crossing Corridor Improvement Program, all rail-highway crossings in a community or on a corridor are evaluated by a diagnostic team. The team develops a corridor-wide improvement program, which includes installing signs and markers along the highway, clearing obstructions to make warning devices and approaching trains more visible to motorists, and upgrading the track surface to help prevent vehicles from stalling on the tracks.

Also in July, FRA issued a comprehensive Rail-Highway Crossing Safety Report. This report reviews rail-highway safety statistics, discusses past and present efforts to improve safety, and includes FRA's recommendations on future actions that can be taken to reduce the number of rail-highway crossing accidents and fatalities. These recommendations are in the areas of education, enforcement, engineering and evaluation and are summarized below.

Education:

- FRA should maintain its commitment to Operation Lifesaver.
- FRA should encourage the National Safety Council (NSC) to take the lead in developing a rail-highway crossing safety pamphlet for inclusion in all driver license renewal application packages.
- FRA should encourage efforts to develop public education messages stressing train versus automobile braking capability.

Enforcement:

- FRA should develop presentation materials addressing enforcement for use in communities along the Nation's rail lines.
- FRA should work with railroads to identify "high exposure" crossings with repeated warning device violators and supply this information along with train schedules to local law enforcement officials.

Engineering:

- FRA should push for continued funding through the Federal Highway Trust Fund for safety improvement at rail-highway crossings.
- FRA should serve as a focal point, sharing gathered information on "low volume" crossings with state and local officials.

Evaluation:

- FRA should complete the incorporation of its accident severity prediction formulas into resource allocation procedures and make them available to the states and railroads.
- FRA should evaluate and encourage NSC to evaluate the Texas "800 number" experiment (a toll free, voluntary call in system for the public to report rail crossing device malfunctions) and advise the states of the potential impact of expanding the program.
- FRA should urge the states to accelerate sign placement at crossings that lack signage.

An analysis by region of rail-highway crossing accidents and fatalities versus the number of public crossings showed that the percent of accidents and fatalities versus the percent of crossings has remained approximately constant for all regions except for one. In that region, the percent of accidents and fatalities has been 20 percent of the total, while the region has only 14 percent of the total crossings. The reason for this disparity could not be readily determined. However, it is suggested that FRA monitor regional performance in this area.

Rail labor, during its meeting with the Task Force, recommended federal regulations requiring regular testing, inspection and maintenance of rail-highway crossings. FRA is currently reviewing the need for such regulations and will issue a final report on this subject by the end of 1985.

Trespasser Fatalities: As shown in Table 10, trespasser fatalities have increased steadily, as a percentage of total railroad related fatalities, from a low of 24.5 percent in 1978 to a high of 40 percent in 1984.

TABLE 10
TRESPASSER FATALITIES

1977 - 1984

Train Year	Total Fatalities Involving Railroad Operations	No. of Trespasser Fatalities	Percent Trespasser Fatalities*
1977	1,530	399	26.1%
1978	1,646	403	24.5%
1979	1,429	421	29.5%
1980	1,417	457	32.3%
1981	1,284	466	36.3%
1982	1,119	414	37.0%
1983	1,073	400	37.3%
1984	1,247	499	40.0%

* These percentages include only trespasser fatalities occurring at locations other than rail-highway crossings.

Both FRA and the railroads have been actively involved in efforts to reduce trespasser fatalities. These efforts include educational programs such as "Operation Lifesaver," installation of fencing along certain rail rights-of-way and around some rail yards, and the installation of "no trespassing" signs.

The combined trespasser and rail-highway crossing fatalities account for slightly over 90 percent of the total fatalities involving train operations. This percentage has remained essentially constant since 1977. In terms of total fatalities, these two types of occurrences continue to be the greatest single safety problem facing the Nation's railroads.

Recommendations:

⑪ 1. That FRA give top priority to implementing the recommendations of its July 1985 Rail-Highway Crossing Safety Report and to participating in Operation Lifesaver.

⑫ 2. That FRA continue its efforts in working with the railroads to reduce trespasser and grade crossing fatalities through education, eliminating hazardous conditions where appropriate, and working with local law enforcement officials.

Chapter 11 Railroad Employee Safety

FRA's mission, as cited in the Federal Railroad Safety Act of 1970, is "...to promote safety in all areas of railroad operations and to reduce railroad related accidents, and to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials." This broad mandate charged FRA with ensuring safety of both the general public and rail employees.

In 1978, FRA published a policy on railroad occupational safety that redefined the responsibilities of FRA and the Occupational Safety and Health Administration (OSHA) concerning rail employee safety. Under this policy, FRA concentrates its efforts on employee safety involving train operations, and OSHA is responsible for employee safety in non-train operations. The collection and publication of employee safety statistics remained with FRA. The effective implementation of this policy requires close coordination between FRA and OSHA.

Approximately 85 percent of on-duty rail employee fatalities and injuries involve non-train incidents and about 14 percent involve train incidents. Train and rail highway crossing accidents each account for less than one percent. The number of railroad employees decreased about 23 percent from 1981 through 1984. The total number of on-duty railroad employee fatalities and injuries decreased by almost 30 percent. Since the number of on-duty employee fatalities and injuries decreased substantially and at a greater rate than the reduction in the number of employees, rail employee safety, at least from an overall perspective, has improved. However, employee fatalities and injuries increased by about 10 percent between 1983 and 1984. This increase was fairly well distributed across all types of events (train accidents and incidents, rail crossings as well as non-train incidents).

It is evident that rail employee safety is still an important problem. The actions and efforts that have been and are being taken by FRA, OSHA, and the industry have substantially improved employee safety. Notwithstanding these improvements, FRA and OSHA, in cooperation with industry, should continue their present efforts, and reexamine current policies and procedures to determine if additional steps can be taken to improve employee safety.

Recommendation:

⑬ 1. That FRA continue its emphasis on improving rail employee safety and reexamine its current policies and procedures, in cooperation with OSHA and the rail industry, to determine if additional measures can be taken to improve employee safety.

NTSB COOPERATION

Mr. LEHMAN. The NTSB perhaps has a little different view of your safety record than the Secretary's task force.

They told us last week that the FRA has the lowest acceptance rate of NTSB recommendations than any other DOT agency (70 percent), and they expressed skepticism about the thoroughness of the Secretary's review of the FRA.

Why is your record with the NTSB so poor?

Mr. RILEY. Well, I will go back to the same answer I gave to the preceding question. You test the effectiveness of a safety program in how safe the trains are.

Railroad accident rates have never been lower, and they have improved sharply in each of the last three years.

Now, as to the NTSB's criticism. As they know, we have accepted about 70 percent of——

Mr. LEHMAN. You do not answer their mail; that is the problem.

Mr. RILEY. Well, we do. It is interesting. Let me digress on that. When I came to FRA two and a half years ago, we had about 123 open recommendations, I believe, and we changed our response system. I assigned one person, full time, for six months to just respond to NTSB recommendations, and we have lowered that number down to a couple of dozen now.

But therein lies the issue. When I was beginning my testimony today, I made the point that safety is a cost-benefit issue. The real art of safety enforcement is looking out at all the universe of things you could do, and deciding, given finite resources, which ones you will do, and this is an important point and I want to take a minute to make it.

We have the capacity to do two to three proceedings a year and we have to sort out all the different things we could do and decide which ones we will pursue.

Because if we are wrong, and we even take the ninth or tenth most important area, we are not doing our job. NTSB is helpful, in that they do produce a lot of of ideas, many of which are creative.

The fact that we have accepted 70 percent of their recommendations is testimony to how we view them, but the difficulty is NTSB produces recommendations in bushel basket numbers.

I mean, at one point, I had 164 of them. If we attempted to hold a hearing on every one of those recommendations, we would go out to about the year 2012, and they never distinguish which is more important than the other, where should you go first. So in terms of being a spawning ground for creative ideas they are very good and we have benefitted from that effort.

But in terms of addressing the real hard knocks issue of what is the most important issue, what should you address now, we get very little guidance, and I do not think that the litmus test of our safety program ought to be the percentage of NTSB recommendations we accept.

For example, at the top of this page of questions, you make exactly the point I would like to make.

NTSB had recommended that we put an 8-hour prohibition period. In other words, an employee cannot drink within 8 hours of going on duty, similar to what aviation pilots were required to do.

We did not accept that recommendation. Why not? Because in aviation employees work scheduled shifts, and that is a perfectly appropriate environment for a prohibition period.

In the railroad industry employees do not work scheduled shifts; they are on random call.

So for us, an 8-hour rule is a rule of prohibition. A man never knows when he is going on duty. And I did not believe that a rule on prohibition would be respected or enforced. However, if you really think about it, that prohibition period rule is designed to ensure that an employee shows up for work clean, and able to perform. We require that and we give the industry the ability to enforce it with testing.

Now that is an example of the kinds of differences that come up, where we do not accept their recommendations. I think it just amounts to two different views of an issue. I do not think it makes any one of us less safe or more safe than the other.

I would go back and say that my bottom line is that our safety record and our improvement in safety numbers is unequalled in any other mode, and I think that is the litmus test, not the percentage of NTSB recommendations you take.

And as to the thoroughness of the Secretary's review of FRA, Joe and I went through that review for eight or nine months, and frankly, it took a substantial amount of time away from our enforcement activities, but for good reason.

I was there and I know it was thorough. I do not know the basis on which they have decided it was not thorough because I do not think they were there.

CREW SIZE ON FREIGHT TRAINS

Mr. **Lehman**. The Safety Board has been especially critical of the FRA over the issue of crew size on freight trains. They recommend that you require that there be at least two crew members on locomotives who are qualified to operate the locomotive.

They wrote you a letter last May, which said in part, and I quote: "When the accident data is analyzed purely from a safety standpoint, the need for more than one qualified train operator in the locomotive is obvious. Even on short routes, the locomotive operator needs relief occasionally. Therefore, the safety board concludes that safe freight train operations under most conditions require that at least two persons should be on the locomotive, one of whom should be in charge, and that both persons should be qualified to operate the locomotive."

Of course the industry has been trying for years with some success to eliminate firemen from their locomotives, and they have strongly resisted the suggestion of a standby engineer as well.

What is your response to the Safety Board's recommendations?

Mr. **Riley**. Well, you ask me in the next question to submit a copy of all the correspondence for the record, which I will do.

Mr. **Lehman**. Right.

Mr. **Lehman**. Let me ask you both questions so you can answer them together.

Mr. **Riley**. Yes. I will answer both together.

Mr. LEHMAN. The Safety Board also believes that the FRA should require that one person in the cab should have total responsibility for the operation of the train. They say, in their May 1985 letter, and I quote:

"The safety board is fully aware that implementation of this measure involves a drastic change in philosophy and historical rights on the parts of management and labor. However, accidents continue to occur because one employee is not in clear charge. These accidents result in a loss of life, expose communities to dangers from hazardous materials spills and cost the railroad industry millions of dollars annually."

Is there a safety problem in the way responsibilities are currently divided on trains?

Mr. RILEY. As to that letter—and both recommendations were contained in the same letter—we have not yet responded to that and we have not yet responded to it for a reason.

I have asked our safety people to go back over our accident investigative report records, and see if you can find a correlation between these situations and accidents or a significant number of accidents over time.

The reason I have done that is, there is a certain logic to the argument that NTSB makes in the letter, at least in an abstract sense. The difficulty is, as we have gone back through the accidents, we cannot find accidents correlating to these situations.

They are observations that have come in reports on accidents that occurred for a different reason, and I am not prepared to say that there may not be some merit to some portion of the recommendations, but what I am saying is I have not responded to them yet because I have not been able to correlate this logic to any real world accidents.

And in that scenario, it cannot compete in a priority sense with communications and locomotive cab issues that we are working on this year, which do correlate to real world safety exposures.

Even if you look back at the NTSB letter, and I had it here so I pulled a couple of pages out of it, they make the point that—as to the conductor—"the emphasis should be placed"—I am reading from their letter—"on procedures for keeping the conductor informed, rather than on locating the conductor at a specific place."

And I agree with that in the abstract. This is something that we are going into in the communications inquiry. Radio-equipping trains. The types of, the modus operandi for communication between the cab and the caboose. It is also an issue that disappears with the disappearance of the caboose, because, of necessity, the conductor moves up to the cab. As to the issue of who is in charge on a train, as I have looked through these accidents, I have not found it yet—and I say yet because I have not finished, and I want to be fair about that—I have not found systemic problems in the sense that there is confusion over which employee is in charge of which function.

What I have found in most cases is that the responsibilities of the employees were very clearly defined. We ran into a situation where one employee was simply not willing to recognize another one's authority, and that is not an issue you can fix by changing definitions.

If you look at that NTSB letter, they cite a Louisville and Nashville Railroad accident and they go on to say, the failure of the conductor—quote—"to request clarification of a radio message from the dispatcher, when he did not understand the message," end quote, was considered as a contributing causal factor.

And I have to say that whether the man is in the caboose or whether he is in the cab, if he is going to misunderstand a message and not clarify, you are going to have the same accident. And whether he is an engineer or a conductor. No matter how you define the job responsibility, that type of error is personal to the individual; it is not systemic within the structure. So the bottom line is, I have not taken those recommendations lightly, which is why we have devoted the time to go back over the past accident histories, because they do have a logic on their face.

What I have to say to you is that I cannot correlate that logic to any real world accidents at this point, and we will supply you with the final judgment and the final report that we make on it.

And if we do go back and reach a conclusion that it is there, of course we will act on it.

ASSIGNMENT OF CREW RESPONSIBILITIES

Mr. LEHMAN. I guess what bothers us a little bit is that most of your testimony, your investigation centers on what happened after the accident, but don't you try to find out who is in charge of a cab, and those kind of things—spotchecking before the accident happens—instead of after the fact?

Mr. RILEY. What we do, it is a twofold thing. We have checked the operating rules of all of the nation's railroads to determine whether they clearly assign responsibilities to each employee and we have not found those operating rules to be unclear.

We have then gone back after the fact, where accidents have occurred, and attempted to determine whether confusion over the assignment of responsibilities did in fact cause accidents. So we have tried to look at it from both perspectives.

What we found out is the pattern in these accidents is a situation where one crew member either does not perform his responsibility or seeks to usurp the responsibility of another.

And the issue I am raising is whether you can solve that kind of a problem by re-writing an assignment of responsibility that is already not unclear.

And I raise it as a question, because I have not resolved it in my own mind, to be honest with you. I can say, however, that we know from the examination we have done, that the exposure from this issue, if it is real, is not as great as the exposure from others that we feel we need to address today.

So it is an allocation of resources.

Mr. LEHMAN. Please provide for the record a copy of the Safety Board's May 1985 letter to you on this subject along with a copy of your response.

[CLERK'S NOTE.—The Federal Railroad Administrator failed to provide the requested information.]

RADIO COMMUNICATIONS DEFICIENCIES

Mr. LEHMAN. Another unresolved area between the Safety Board and the FRA is in the area of radio communications.

We understand that the NTSB wants you to initiate a rulemaking that, among other things, would require trains operating on common tracks to have compatible radio equipment.

That seems to be a common sense kind of recommendation. Would you elaborate on the safety problems in this area, and tell us how you plan to address that.

[The information follows:]

Railroad radio communication improvements remain a high priority in FRA's safety improvement initiatives. We have identified several safety issues.

The major issues which we have identified in railroad radio communication include the following:

Trains operating without radio equipment capable of receiving or transmitting on the frequencies available in a region (includes cases of no radio aboard the locomotive or radios with the different frequencies than available in region);

Loss of reliable radio communication because of geographic, excessive channel loading, or other interference;

Improper maintenance of radio equipment and adequate backups;

Non-adherence to formal procedures during the communication process;

Loss of radio communication capability in the event of an accident, an important consideration for summoning emergency assistance; and

Non-use of radios in certain operations where radio communications could improve safety margins or provide a backup system;

In the near future, FRA will initiate an informal public inquiry on these safety issues and the broader area of radio communications. FRA's main objective is to obtain a consensual approach for improved radio communications, whereby the railroad industry commits itself to upgrade further its equipment and operating standards and practices.

If the informal inquiry and consensual approach are not sufficiently effective, FRA will evaluate whether to proceed with a Federal rulemaking in radio communicaions as has been proposed by the NTSB.

FRA ACTIONS ON RADIO COMMUNICATIONS

Mr. LEHMAN. Would you please provide for the record a listing of FRA actions taken in the radio communication area since July 31, 1984, when it was announced at a National Railroad Accident Symposium that proceedings would begin on this issue?

[The information follows:]

FRA has taken the following actions pertaining to railroad radio communications since July 31, 1984:

Organized FRA's analysis and study of the subject within the Office of the Executive Director;

Conducted at least three meetings to assess current radio communication issues with railroad, labor and/or rail supply industry representatives to assess current radio communication issues;

Conducted at least eight meetings with railroad, labor and rail supply industry representatives to assess advanced train control and radio communications;

Attended the Associated of American Railroad's public briefing on advanced train control on February 5, 1986;

Discussed research of communication needs pertaining to advanced train control with three independent study groups, including TSC;

Met with staff from the Federal Communication Commission to discuss current radio communication issues; and

Within FRA, examined available railroad accident data files to identify and prioritize safety-oriented questions on current and advanced communications.

AMTRAK RADIO COMMUNICATIONS PROBLEMS

Mr. **Lehman**. The NTSB has also expressed concern to us about the inability of Amtrak's radios to operate after a collision. This, of course, could affect the time taken for emergency response teams to arrive.

Do you believe there is a problem in this area? If so, what do you intend to do about it?

Mr. **Riley**. I agree with most of the NTSB's comments on the problems in the industry in radio communication, and that is why our major effort for this year is the communications rulemaking.

Now I think this is the opposite of the last recommendation. You can correlate radio communication and communication problems to real safety exposure. We have seen it come up in accident after accident, and this is where we want to devote our resources now.

TANK CAR HEAD SHIELD PROTECTION

Mr. **Lehman**. We also understand that the NTSB also believes your recent regulation requiring added protection on certain tank cars does not go far enough.

I believe their recommendation to you is that all tank cars carrying materials for which DOT's emergency response guide requires evacuation of one-half mile or greater should have head shield protection.

Is this a good idea, and what are your plans to follow up on this recommendation?

Mr. **Riley**. Shortly before I came to FRA, in the HM-175 rulemaking, back when Bob Blanchette was the administrator, they did an analysis of the possible cost benefits of requiring retrofit beyond the areas in which we required it.

They concluded that attempting to go beyond what we have required, and mandate retrofit of the 200,000 car fleet for commodities of lesser concern produced a negative cost benefit, and I do not know of any substantial research and development, that has come about in the last two years that would change that.

But we are doing three things on this that I want to note. We are looking, now, at chlorine cars as the next area where we may expand this regulation and we are doing two research projects on chlorine.

First, we are researching the fire resistence of the chlorine installation systems that are on present cars, and that are on the new cars coming into the market.

Secondly, we are researching the puncture-resistence of the chlorine cars, and it is conceivable that we may expand our regulations somewhat, depending on the outcome of those research projects.

I do not want to rule out the possible expansion of this. I want to make it very clear where we are on this issue. I think that the retrofit requirements should be expanded as far as cost benefit can justify, and this was studied a little over two years ago, just before I came here, and a line was drawn, and I am not adverse, and am in fact perfectly willing to do that kind of study again, because I think we ought to take these things as far out as we can economically justify taking them.

COST-BENEFIT JUSTIFICATION FOR RULEMAKING

Mr. **Lehman**. Well, on such a material as MIC, which caused the Bhopal problem, it is hard to say that we should rely on a cost benefit analysis on something as hazardous as this. And I just wonder if, for that kind of material, or even nuclear waste material that railroads may be hauling from time to time, whether you have to drop reliance on the cost benefit analysis in drafting your guidelines?

Mr. **Riley**. Well, on the nuclear material, we are right now doing something on that. The Department of Energy, as you know, has certain cask requirements for the transportation of nuclear material.

We are attempting to develop our own because some of our people believe that we need to develop casking requirements that are stricter than the DOE requirements for movements on trains, and we have been doing a research project on that. So that is one we are looking at.

Mr. **Lehman**. And for the record, can you expand on your nuclear research program?

Mr. **Riley**. I will expand on the nuclear program and I will make a reference to the Bhopal type chemicals that you have referred to, and what the rules are, and how we deal with them. I will be glad to.

[The information follows:]

The objective of the research and analysis program on spent nuclear fuel transportation is to assess the thermal environment requirements for spent fuel casks if they are involved in a rail accident involving a fire. The results of this program will be useful in determining recommendations for evaluating proposed spent nuclear fuel casks, and the need for changes in the current evaluation criteria.

The Research and Special Projects Administration has issued an amendment to the Hazardous Material Regulations (HM-196) effective May 1, 1986, which governs material, such as methyl isocyanate. Docket HM-196 classifies these materials as an "inhalation hazard", and recommends specific packaging, dual placarding and documentation requirements.

LOCOMOTIVE CAB EQUIPMENT

Mr. **Lehman**. We understand that you announced back in the summer of 1984, that the FRA was planning to look at the design of locomotive cab equipment and the working environment within the cab.

What safety problems did you uncover and what plans do you have to address them?

Mr. **Riley**. That, when I said we were doing two things this year in communications, was the major one; this is the other one. Bill Loftus, the Executive Director of FRA, has done the preliminary research work on this for me. We have had about a half a dozen meetings with people in the design field, to talk about where they see themselves going, and the design problems that have come up in the past in the different accident investigations.

Bill has also prepared an options paper for me on the issues that could be raised in the inquiry. Now here is where I intend to go on it this year.

Now that we have completed our work on the end of the train marker, it is my intention to do a public safety inquiry on issues surrounding the locomotive cab.

It is not necessarily my intention to move to a rule on that. My hope is that out of the public safety inquiry we can form a working group to come up with standards which the locomotive manufacturers will voluntarily accept and implement. So that is the direction of that proceeding, and I believe that by the time I see you again next year, we will have completed the inquiry and established the working group, and hopefully be on our way to that development.

Mr. LEHMAN. By the way, did you see that movie "Runaway Train?"

Mr. RILEY. You know, I want to see that. I did not see it.

Mr. LEHMAN. It scared the heck out of me.

Mr. RILEY. It was filmed on the Alaska Railroad, and I will tell you what the big issues are on the locomotive cab. The big issue is the survivability.

We know there is very little you can do to make a caboose survivable because it is so light, and it has to be light to whip around on the end of a train. But a locomotive cab, I am not convinced that one cannot design the cab to create a safe area within the cab, which, while obviously not totally crashworthy, would increase the ability of an employee in that cab to survive even a serious collision.

Mr. LEHMAN. The engineer had a heart attack, didn't he?

Mr. RILEY. I did not see the movie. In that case, a train struck a stationary vehicle on a track and the car that was positioned behind the locomotive rode up over the top of the locomotive and sheared off the top of the locomotive and it killed four to five people. But we walked around inside that cab and tried to look to see if there was an area in the cab, where a person could go when an accident was imminent rather than to leap out of the cab, and have an opportunity to survive.

That is one of the big issues that we are looking at. The other issues are there is always a debate on whether there is potential ear damage from the venting of air in a locomotive cab and I want to frankly recharge that debate and hear the evidence on it and see if there is a way that we could do that better.

There are other issues but they are representative of the kinds of issues that Bill and I have isolated.

The communications rulemaking is going to be a fullblown effort to take testimony and I suspect that it may well lead to a rule. This one we hope to lead to a consensual agreement.

Mr. LEHMAN. For my own piece of mind, would you have somebody on your staff see that movie and find out what you are doing to protect the public from a heart attack by an engineer with a train at full throttle?

Mr. RILEY. Well, let me answer that one. In fact, I want to answer it in two ways.

On the Northeast Corridor where we run passenger trains with high speed with one engineer in the cab, those trains are all equipped with a deadman's control and if the engineer should die, he would fail to respond to the signal on the control and the train would stop. And that is how they are equipped up in the Northeast Corridor.

And one of the issues that we are raising in the locomotive inquiry is whether we should have that on all trains.

Secondly, the conductor, of course, if he is back in the caboose can always cut the air, and stop the trains. So there are a lot of ways—that movie, I think, is probably more dramatic than reality suggests, but I would like to see it.

Mr. LEHMAN. Yes, let me know what you find out.

Mr. RILEY. I understand that it ran wild for an hour and a half or something on the movie?

Mr. LEHMAN. Yes, it was rough to watch.

TRACK BUCKLING

Mr. LEHMAN. You also stated that the FRA was looking at the problem of track buckling and that it was one of the most difficult safety problems because it beats the signal system.

It does not shunt the current. The track just sits there weak. Would you explain the FRA's actions in the area of track buckling, and further explain your concern for safety in this area since the track safety standards do not address this problem?

Also, please identify why standards were eliminated in the revisions of 1982 concerning continuous welded rail and rail arching, which we understood were designed to prevent track buckling.

[The information follows:]

We have a comprehensive research program underway, in conjunction with railroad representatives, to analyze the variables contributing to track buckling. Our concern for this problem centers on the sudden nature of the track buckling phenomenon, often occurring immediately before or during the passage of a train. Just as important a problem is our inability to detect, during routine inspections, the presence of high longitudinal rail stress capable of producing track buckles.

In the interim, we are holding annual track buckling workshops with the industry to present our research results and to disseminate industry experience in combating this problem.

The track safety standards contained two provisions addressing this problem; Section 213.119 "Continuous Welded Rail" and Section 213.125 "Rail Anchoring." Both sections recognized the importance of controlling longitudinal rail stress. Unfortunately, because no precise safety limits could be established at that time, and no compliance measuring devices existed, the two sections were withdrawn until research results could provide more definitive solutions to this problem.

FUTURE GRADE CROSSING IMPROVEMENTS

Mr. LEHMAN. Historically, the most serious rail safety problem has been rail-highway crossing accidents. The Federal Highway Administration currently allots about $190 million per year to pay for crossing improvements, and indeed such accidents have reportedly been reduced by 30 percent since 1975.

How much more can be done on the hardware side to improve grade crossing safety—do not the bulk of crossings needing protection due to frequent traffic now have adequate warning systems?

Mr. **Riley**. I think the answer to that question is yes, they do, and I think there are still, however, some cases where bell and light flashers are merited and that is why we are maintaining that program.

GRADE CROSSING SAFETY STATISTICS

Mr. **Lehman**. Please provide for the record a listing of rail-highway crossing accidents, injuries, and fatalities by year between 1975 and 1985.

[The information follows:]

RAIL-HIGHWAY CROSSING ACCIDENTS AND CASUALTIES

Year	Number of accidents	Number of fatalities	Number of injuries
1985[1]	6,889	574	2,667
1984	7,281	649	2,910
1983	7,161	575	2,623
1982	7,748	607	2,637
1981	9,295	728	3,293
1980	10,611	833	3,890
1979	12,509	883	4,378
1978	13,316	1,064	4,447
1977	13,101	992	4,863
1976	12,925	1,115	4,740
1975	12,071	917	3,860

[1] Preliminary data.

GRADE CROSSING SAFETY EDUCATION

Mr. **Lehman**. It was reported that half of the approximately 7,000 grade crossings accidents last year occurred at crossings where there were gates, lights or both.

And, in 28 percent of the crashes, the driver hit the 13th car of the train.

How does one go about changing driver attitudes about the dangers at these crossings—and can you point to any successful programs in this area?

Do you think that more should be done to mark trains for improved night visibility—such as using side lights similar to what trucks now have?

Mr. **Riley**. Let me answer them sort of as A and B. On A, the most successful program that I can point to is "Operation Lifesaver" and there you can statistically correlate the presence of an active "Operation Lifesaver" program with a reduction in the number of grade crossing fatalities.

And "Operation Lifesaver", of course, is the educational program where people work in communities that are near heavy density tracks to educate in schools, businesses, and clubs.

But the interesting thing is that as you move farther away in time from the point where you made the educational effort, its impact diminishes. So we have not succeeded in making long-term changes in people's attitudes. We have succeeded in making short-term changes in people's attitudes when we have devoted a lot of time and effort to it.

I really wish I could give you a good answer on how much more effective we could make that but the more people that volunteer and the more effort we put into it the more effective that program is going to be.

But we need to develop for the program, however, a common theme and I think the common theme of a train having different stopping distances than a car, is probably the most important one.

We held a conference last year on how to improve operation lifesaver and I think a lot of improvements have come out of that conference. We are going to do a follow-up conference this year.

NIGHT VISIBILITY

As to improved night visibility, we have looked at and researched that issue for years and we have done three different types of research on it. First we did reflectorization. And we looked at the Canadian railroads which have a reflectorization program and we did some in-service testing on the Boston and Maine and what we found out was that the quality of the reflectors diminishes very sharply after their installation and to the extent that they had any use or would have any use, it is rapidly eliminated in service. On the alerting lights, again, this is an issue where we found very little difference, no noticeable difference really between the accident incidence of trains with them and without them. It may be an oversimplification to say that a person who does not notice a head light on a train and its sound and all of the other things, is unlikely to also notice an alerting light.

One device we thought might have had promise was the oscillating light, the light that throws a waving or an oscillating beam, and we tested that. We found out two things, one of which is reported in our studies and one of which was just passed on to me by some of the railroad professionals, on the labor side, some of the engineers.

The study came out essentially the same as the study on the alerting light did. That it really did not make a difference. However, a couple of engineers pointed something out to me which I think was true: That an oscillating light may actually be more dangerous than the status quo because it is very difficult to judge the distance and the speed of a train that is moving at you when you have that blinking oscillating light. It can be very deceptive about the speed and movement of the train.

And I cannot give you any statistical evidence of that but it was just a point that was made by some of the employees in the field that seemed true to me, as I observed it.

So, we have tested three things to try to make trains more visible and none of the three tests proved satisfactory but we are certainly prepared to explore other possibilities as technology develops them or people suggest them.

OPERATION LIFESAVER

Mr. LEHMAN. How much Federal money goes into your "Operation lifesaver"?

Mr. RILEY. I cannot tell you off the top of my head.

Mr. LEHMAN. Well, for the record.

Mr. RILEY. I will do it for the record.

[The information follows:]

In the past, we have not funded Operation Lifesaver directly. The program was developed by the States and railroads, with support of the National Safety Council and other public service groups, as a means of educating the public about the hazards of rail-highway crossings.

FRA has complemented Operation Lifesaver in the following ways:

In FY 1985, we spent approximately $8,000 on printing pamphlets, posters, and notices; having pens and movies made; and mailing materials.

FRA field personnel assist by participating in local speakers' bureaus and by setting up and staffing displays and arranging meetings between industry and local officials.

FRA's safety field staff made nearly 1,200 contacts and presentations for Operation Lifesaver in 1985 reaching directly over 100,000 individuals.

FRA has also provided funding, as a sponsor, to the National Conference (last in July 1984), helped in the distribution of materials, and participated in planning sessions. FRA is actively involved in planning the 1986 National Conference.

Mr. LEHMAN. And also whether you think that it should be increased?

Mr. RILEY. All right, I will be glad to comment on that for the record.

[The information follows:]

In addition to being actively involved in the planning for the 1986 Operation Lifesaver National Conference, FRA and the Federal Highway Administration are each providing $17,150 to go towards essential materials, equipment, facilities, and other services for the conference. Since the industry-state-local program has been so successful, we believe that our present level of involvement is sufficient.

GRADE CROSSING SAFETY EARMARKED FUNDS

Mr. LEHMAN. Last year we earmarked $200,000 out of your R&D budget for added grade crossing education activities. How have you spent these funds and what payoff do you expect from it?

[The information follows:]

We are in the process of defining the scope of activity in this area. We continue to believe that educational programs are the most effective means of alleviating grade crossing accidents. We intend to develop educational materials specifically oriented to drivers of school buses and trucks carrying hazardous materials and construction equipment. In addition, material will be developed to alert law enforcement officers of the highway-railroad grade crossing hazards and the most common causes, so that enforcement can be enhanced.

We also intend to update the DOT Rail-Highway Crossing Accident Prediction and Resource Allocation Procedure. This model assists States and railroads in determining the most effective allocation of Federal funds for improving crossing safety. The model was last updated in 1981 using inventory and accident data from 1978. By updating and recalibrating the model using accident and inventory data through 1985, States and railroads will be able to make better allocation decisions resulting in improved crossing safety.

GRADE CROSSING SAFETY PROGRAM GOALS

Mr. LEHMAN. The Executive Director of the Federal Highway Administration is reported to have said that grade crossing fatalities could be cut in half by means of continued Federal participation in grade crossing capital projects and education programs.

Is that a realistic target in your view?

Mr. RILEY. I do not think that continuation of current education and capital projects is capable of cutting it in half. I really do not. I wish that I could say that it was but I do not think that it is.

GRADE CROSSING DATA BASE

Mr. LEHMAN. The FRA maintains a data base that is used to select crossings needing the most attention. Are you satisfied with this data base—are there any deficiencies?

Mr. RILEY. I am satisfied with the data base. At times, we have had a few instances of slow response but as of last year, we adopted the practice of sending out demand letters when the response was slow and we found that people are pretty responsive to that.

GRADE CROSSING MAINTENANCE STANDARDS

Mr. LEHMAN. The Brotherhood of Railway Signalmen has criticized the FRA for failing to set national standards for maintaining, inspecting, and testing grade crossing warning devices.

Why has not the FRA set such standards?

Mr. RILEY. This is an issue I feel very strongly about. We held a full day of hearings on that proposal and I will give you the conclusions that came out of the full day's hearings to me.

Although this would be a very good proposal for the signalmen because I think that we would have to hire a good many of them, we went back and looked at this and we did two three-year analyses of the impact of equipment performance on grade crossing safety.

In the first, we looked at over 12,000 accidents and we found, I believe 37, and I cannot be off by more than one on that, I will correct it for the record, if I am, in which there was even an allegation that there was some equipment failure.

And when we looked into those allegations we found that many of them were either not true or involved the failure of one light or four, something fairly minor. We redid that. A year ago, when I was before this Committee, I told you that we would rerun the same study on the years 1981 to 1984 and we have completed that and we have looked at nearly 10,000 accidents and we came up with only 32 cases where it was even alleged that that may have been a factor.

Under the worst case scenario, you are talking about a fraction of one percent, this is a very, very, very expensive program that is being advocated by the railroad signalmen to divert that large a chunk of safety resource into a program that would have at best, marginal, and I frankly do not think any impact, on safety, is distorting the allocation of resources away from areas where it can make a difference in to areas where it cannot make a difference.

And this is really an economic proposal. It is an employment proposal. It is not a safety proposal.

We also discovered that the kinds of problems that can lead to intermittent failure are problems that are not likely to be disclosed by an inspection.

Finally, we determined that the new grade crossing equipment that is being produced today with its telemetry and recording devices is capable of telling you everything that an inspection could tell you. I contemplated buying a group of those machines and doing some spot testing around the country and, frankly, I rejected that idea, after I heard the hearing.

Because when you have analyzed 10,000 cases, and you can only come up with 30 allegations, many of which are not accurate, you realize that you are in an area where you are going to get very little yield for a very large expenditure.

This would hurt safety, it really would.

GRADE CROSSING GATE DELAYS

Mr. Lehman. One of the things that frustrates me from time to time is the fact that the gates go down, but do not go back up immediately. And then you see all kinds of people snaking around them. I just wondered if that itself can entice accidents.

Mr. Riley. Yes. That is a very legitimate objection. It does not come from defective equipment. One of the things, and this is one of those trade-off issues—one of the things that the railroad industry——

Mr. Lehman. The train will pass by and park about 40 feet down the track and then stay there and——

Mr. Riley. That is absolutely right. And I will have to tell you that is a bad operating practice and it is one which we are harrassing the railroads on and it is not one that comes from defective equipment. And it is not one that you can fix with equipment inspections but it is a bad practice, and it should not be done.

And if the railroads are going to do that they should send a flagman out to the crossing and flag people through. Because what that does, is that it destroys the public's respect for the crossing and that is why that is a bad operating practice. I do not know that I really need to add very much on that but I think that your objections are very legitimate ones and would not be solved by this proposal are ones that we are doggone committed to solving.

I have really learned if I can just make an aside, in the two and a half years I have been here, there are very few issues in this industry that are conceptual issues. They are all number issues. You can make logical arguments for so many conclusions in safety. You have really got to go out and look at the numbers and find which ones are problems and which ones are not. And there is no substitute for it. And when you do that you find something that you did not think were problematic were really serious problems. You find others that seem logical——

Mr. Lehman. Some of them are very simple like blowing the train whistles after 10 p.m. when you run through residential neighborhoods, but I will not bring that up right now.

Mr. Riley. You know, I thought of bringing that up a minute ago but I thought that I would not because I know where those letters come from.

GRADE CROSSING MAINTENANCE STANDARDS

Mr. Lehman. I imagine that they come from other parts of the country too, hopefully.

Please amplify on your answer for the record citing relevant statistics in support of your position.

[The information follows:]

In 1976-1978 the FRA formally considered the need for rulemaking. The action was terminated because of a lack of potential benefit. In the two year (1975-1976) period studied only 37 accidents occurred when automated warning devices failed to operate because of equipment failure. There is no assurance that these 37 accidents would have been avoided even had the devices been operating. In the same period, more than 12,000 accidents occurred at crossings with automated devices. (In the most recent two years, 1984-1985, there were 6,772 accidents at crossings equipped with automated warning devices. In the last decade the accident trend has been declining, further lessening the benefit potential.)

The study was repeated/updated and confirmed in 1984 when a three year period (1981-1983) was reviewed. During this period 32 incidents of non-operation due to equipment failure occurred. This represents 0.3 percent of the 9,991 accidents which occurred at public crossings equippped with automated warning devices.

REGIONAL GRADE CROSSING CONFERENCES

Mr. LEHMAN. In 1984 the FRA sponsored a national conference in Minnesota with the National Safety Council that took a broad look at what can be done to address grade crossing fatalities. You stated that as a result of this conference that the FRA would be holding a series of state and regional conferences on low-cost alternatives later in 1984.

Please explain what the FRA has accomplished in these regional conferences?

[The information follows:]

We did not hold State and regional conferences in 1984 as originally planned. Instead, we spent the time analyzing the results of the Minnesota conference and making preparation for a second safety inquiry which was held in January 1985 in Washington, D.C. A third conference was held in July 1985 in Kansas City, Missouri to present the findings of the two safety inquiries and the Department's and FRA's current and proposed initiatives. These initiatives were documented in a report titled *Rail-Highway Crossing Safety Report* which was also presented at the Conference.

At the July 1985 Conference, Secretary Dole also announced a new initiative, a series of demonstration projects that utilize the low cost corridor approach to rail-highway crossing safety. FRA has worked with FHWA in establishing projects in several disparate locations from Florida to Alaska. Because of low traffic volumes and/or few or no prior accidents many crossings are overlooked by highway and railroad planners because they do not merit the installation of automated warning devices. Other crossings are often not given further consideration because they are already equipped with automated devices. A myriad of low cost improvements do exist which should be considered.

PHILADELPHIA COMMUTER RAIL SAFETY

Mr. LEHMAN. Moving to another safety topic, GAO issued a report in January on the safety of Philadelphia's commuter rail operations. The GAO found that SEPTA had six train accidents in 1984 which was more than the combined experience of four other Northeastern commuter rail systems [Boston, Long Island, Metro North, New Jersey], even though SEPTA carried fewer passengers than three of those commuter rail systems. In addition, SEPTA reported more non-train injuries, such as passengers falling off steps, or platforms, than the other four commuter rail systems.

The FRA made a special safety assessment of SEPTA in April. What were the results of your review?

Mr. **Riley**. Well, the results of our review are embodied in this document, which has an executive summary. I am not going to ask that it be submitted in the record, I will certainly submit it to the Committee.

Overall, we made the decision to investigate SEPTA because their accident performance over a 2.5 year period was the worst of all the commuter railroads and that is how we decide where we are going to go.

When we went in to look at SEPTA we found that it was afflicted with many of the problems that tend to come from systems that have been merged from other systems. We also found out that as you know, we did not have jurisdiction over these urban transit systems until very recently. This is a system that was slow to recognize that they had to comply with Federal safety standards.

We did a full-blown assessment, and in fact, the GAO report was largely based on ours. We did a full-blown assessment as you can see, 30 men and women went over that system and we looked at the signals and we looked at its track and we looked at its operating practices and I could probably spend a lot of time summarizing what we found. But suffice it to say that we found a need for major safety improvements and it was not one of the more encouraging reports. I have to frankly tell you that we probably found more deviation from standards on this system than we found on any other one that I have assessed while I have been here.

However, I will also say that the climate of improvement between FRA and SEPTA has improved so much since this assessment and I really believe that we have a good working relationship with SEPTA. And I think that SEPTA is well on their way to addressing these issues raised in this memorandum.

Curiously, we found that their bridges, which is where we suspected that we would have a problem, were not in the bad condition that they were reported to be in. We found that they while they needed bridge work and maintenance it was not as severe as we thought it to be. We found that their track work was actually fairly good, that the track work on SEPTA was not, again, as bad as what we thought it might be. We found serious problems in the signal systems. We have had to go back with SEPTA and retest and redesign a number of the signal systems. The last point I would just raise to you for the purpose of answering on the record, is that one of the failings that SEPTA had, which we were concerned about, was a weakness in their training programs and a lack of an accident investigation reporting and accountability system.

There was no set modus operandi for how to respond to a work place accident and how to alter procedures to assure that the accident did not reoccur.

And I think SEPTA has moved very rapidly to address those two issues since the assessment was completed, and I really developed a good working relationship with Louis Gould, the Chairman of SEPTA.

SEPTA COOPERATION

Mr. Coughlin. Your relationship is good and you feel that SEPTA is implementing the recommendations that you have made, or——

Mr. Riley. I do. I have to say that we had a real crisis on SEPTA at the end of last week when we and SEPTA jointly discovered that a number of the hollow axle vehicles on that system were worn so far out of tolerance that there was a danger of imminent failure. And within 24 hours of the time that we recognized the magnitude of the problem, we had worked out an agreement between ourselves and SEPTA to proceed together to go through the retrofit and examination stage. It is a good agreement, and it is one that is going to work and that is about the best cooperation that I can cite to you from the system. And that is a big turn-around. I think that we had a rocky relationship with them at the start.

HOLLOW AXLE PROBLEMS

Mr. Coughlin. Are hollow axles common to commuter transit vehicles?

Mr. Riley. The type of hollow axle that I am referring to is a 3.5 inch bore hollow axle. Three systems purchased them, Metro North, New Jersey Transit and SEPTA. There were a number of accidents involving these axles over about a four or five year period until investigators began to put the pieces together and realized the problem. When the bore of the hollow axle is that large, the axle tends to flex in service, and that flex, when the axle begins to wear, creates a groove around the journal bearings that leads to freezing of the journal bearings and a burning off of the bearings which releases the wheel.

The famous accident that occurred on this was the one that occurred near New Haven, Connecticut, four years ago, when on Palm Sunday, it put a wheel through the wall of a church. Fortunately there was no one in the church at the time, and as my predecessor used to say, it was not a Catholic Church, that is why.

But seriously, Metro North pulled all of those out of service after that accident and replaced them and replaced the axles.

New Jersey Transit never received an emergency order from FRA. After the Metro North accident, they voluntarily removed the hollow axle vehicles from service and retrofitted them. SEPTA is the only system continuing to run hollow axle vehicles.

Mr. Coughlin. Do they use tell-tales in them?

Mr. Riley. Here is what they did. They would do it in—let me step back for a minute. The only way that you can really tell the degree of wear on a hollow axle is ultrasonic testing, which will tell you without having to break down, whether your wear has reached the critical point. Because the axles are not themselves defective, they just wear very quickly. A way that you can determine from the outside of the train whether you are at a crisis point is to put a tell-tale on the outside of the axle and see if it is melted off. What SEPTA did, with some legitimacy; they have a different type of operation than Metro North and New Jersey Transit did. They do not operate at high speeds for such sustained periods. So they made the decision that rather than replace them, they were going to try to work with them and inspect them periodically. What happened was that the people doing the inspections did not seem to be fully trained on the implications of what they found.

And what happened a week ago is that our auditors and SEPTA's together were going over the maintenance records and discovered entries in those records indicating that axles had been put back in service at wear levels that were within the critical stage. That is what triggered the emergency order.

Mr. COUGHLIN. And that is working out satisfactorily?

Mr. RILEY. Yes, it is working out very satisfactorily. And in case there is anyone listening to this testimony who is concerned with the safety of that system, the two conditions that we imposed by agreement were that the little wax tell-tales would be put on the outside of the axles. They melt at a temperature which is far below the critical temperature for journal burnoff. Every thirty miles a member of the train crew gets out and just walks the train to make sure that they do not have a melted tell-tale. If they do they know that they have got a serious problem and they will pull that car off the train.

And secondly, we know that the failure mode of the hollow axle runs between about 33 miles plus. So these inspections, because they occur at most every 33 miles, do not leave an interval long enough to lose a wheel. The system is safe the way that it is being operated now. I know that last night, one of the local stations up there ran a report saying that unqualified people were out checking the outsides of the wheels and that SEPTA was not using qualified personnel. There is absolutely no substance to that report.

The type of check that has to be done at these 30 mile stations is a visual observation on whether the telltale has burned off. It does not take a high degree of training to do that and I think that what you had there was an inter-union dispute and that for anyone who is concerned about that issue, I want to tell them not to be concerned. I have 58 FRA inspectors up there making sure that SEPTA is doing that test right and I can tell you that they are.

SEPTA SIGNAL PROBLEMS

Mr. COUGHLIN. And in connection with the signaling deficiencies that you found, are those being taken care of and you are getting adequate cooperation?

Mr. RILEY. We forced those to be addressed immediately because the signal problems that we found on the SEPTA system were severe. We found newly installed signals which were wired wrong and they were giving false positives. They literally signaled two trains into one another. We found that some of the operators were so familiar with the problem that they would say oh, yes, well, we do not trust that signal and we just look around to see if another train is coming.

And frankly that was frightening and we went with SEPTA before this report was even released and we walked through the newly installed signals and went back and had them rewired.

And that was truly an emergency situation. That is what triggered the assessment.

Mr. COUGHLIN. But the other signaling recommendations that you have made, are they being handled?

Mr. RILEY. They are being implemented, and some are not complete yet, but they are being implemented at a satisfactory pace.

Mr. COUGHLIN. I know, of course, that SEPTA inherited the system from Conrail back in 1983, so that they have not had it very long at this point. Are there any other areas that are in particularly poor shape other than as reported in your written report?

Mr. RILEY. Well, the biggest problems that we had on SEPTA other than the hollow axles and the signaling difficulties, were in their training programs, in their corporate communications policies and in their work place safety investigatory programs. They really did not have a system in which employees participated in safety awareness programs.

And fortunately those are things that you can resolve with dedication and good management. I do not want you to misunderstand what I have said. There is need for bridge rehabilitation on the program and there is a need for other types of rehabilitation.

But it was not found to be as critical, for example, as the signal problem.

PHILADELPHIA BRIDGE REPAIR FUNDING

Mr. COUGHLIN. We did appropriate some $5 million last year especially to accelerate the needed bridge repairs. Can you tell me about the status of those funds and are they moving expeditiously to correct the main bridge problems?

Mr. RILEY. The funds are now in UMTA and I understand that their transfer is imminent.

The major point that I would make to you is that we have not yet received an application for those funds from SEPTA but we would be prepared to act on an application.

Mr. COUGHLIN. Thank you, Mr. Chairman.

SEPTA SAFETY ASSESSMENT SUMMARY

Mr. LEHMAN. Please provide for the record a detailed summary of the findings and recommendations of your SEPTA safety assessment.

And also identify those recommendations SEPTA does not agree with, including the reasons why.

[The information follows:]

In the 1985 safety assessment of SEPTA, FRA found inadequacies in several areas of employee training and education; staff officers to be relatively inexperienced; and the operational testing program in need of improvement. There were deficiencies in the employee safety policies and an effective emergency response plan had not been developed. Overall compliance with Federal regulations was considerably below the industry average. Areas of noncompliance included blue signal protection of employees and equipment, hours of service, power brake regulations, track and signal inspection requirements and poor maintenance practices.

The FRA recommended that SEPTA should: evaluate the personal safety program and change its policy to demonstrate a positive commitment to safety by top management; develop and publish a comprehensive emergency response program; review administrative procedures of reports and records to ensure compliance with Federal requirements; include provision in funding programs for restoration or replacement of deteriorated facilities; implement improved training and re-training programs for personnel, particularly those in crafts critical to safety; and in a specific area of special concern to replace tubular axles with solid axles in a manner of orderly progress.

SEPTA disagrees with the assessment that there is a lack of positive commitment to safety and cites the development of a new training facility as being indicative of its commitment. In general terms, SEPTA disagrees with several concerns and recommendations on the basis of FRA comments being misleading, vague, omitted or beyond the scope of FRA.

Despite SEPTA's protests, FRA has made clear to SEPTA our intent to follow through on our recommendations. As an example, FRA required that SEPTA initiate ultrasonic tests on the tubular axles and a replacement program of all the axles. Until such tests were fully administered, FRA also required that SEPTA perform checks on the axles with heat pellets to assure that defective bearings were not occurring while the system was in operation. SEPTA and FRA reached accord on such a program on March 7, 1986.

PHILADELPHIA COMMUTER RAIL SYSTEM CONDITION

Mr. **Lehman**. SEPTA claims that the condition of the track, signal system and bridges that were transferred to it from Conrail in 1983 were in very poor shape. Do you agree—and what safety implications does this have?

[The information follows:]

As part of the overall system safety assessment of the regional high speed lines of SEPTA, a complete inspection was conducted of all trackage and turnouts and track related records.

Track conditions were generally good, with some minor exceptions which were addressed by SEPTA management at the time of the assessment. Line segments which have been rehabilitated within the past several years are in excellent condition. Overall, no conditions or practices were noted which would consititute imminent safety hazards.

FRA agrees with SEPTA that many of their bridges are not as well maintained as they should be. A considerable amount of work is necessary to restore these structures to their original condition.

Two consulting firms have inspected and reported on the general condition of 288 bridges on the SEPTA system. SEPTA has reviewed the consultants' recommendations and has established a long range plan for the repair, rehabilitation or replacement of each structure. According to SEPTA the major deficiency in this area is that long range funding sources to meet these needs have not been provided.

Even though there is need for maintenance FRA does not feel there is an immediate safety hazard. SEPTA bridge department is well qualified and is conducting regular inspections. The assessment revealed that not only are proper inspection and reporting procedures in place, but they are being followed faithfully.

Signal maintenance on SEPTA's railroad commuter lines is generally poor, but improvements are being made. About 10 percent of the signal system has been rehabilitated and according to present plans, it is estimated that 50 percent of the system will be completely rebuilt by the end of 1987. These improvement projects will reduce the amount of time signal maintainers are spending on the repair of the existing obsolete equipment.

The followup inspection has disclosed that SEPTA is improving the maintenance of its signal systems. The 50 percent defect ratio found during the 1985 assessment was reduced to 23 percent. However, prescribed tests of the signal systems are not being performed in a timely manner. Approximately 60 percent of the signal systems relays are past due for prescribed testing. In addition, several locations were found having cables and conductors in service with insulation resistance values below the prescribed minimum. These conditions existed during the assessment and have not been abated. There is grave concern that these conditions could contribute to or be the cause of a catastrophic accident.

PHILADELPHIA BRIDGE REPAIR FUNDING

Mr. LEHMAN. We appropriated $5,000,000 in fiscal year 1986 to accelerate needed repairs on some of these commuter rail bridges. What is the status of these funds—are you moving expeditiously to get this work underway?

And when do you expect these funds to be fully obligated?

[The information follows:]

These funds have not yet been transferred to SEPTA because SEPTA has not asked for the funds. The funds will be expediously obligated to SEPTA once that agency identifies the specific projects the funds will be used on.

BRAKE TESTING EQUIPMENT

Mr. LEHMAN. I believe that you also have proposed a rule to let railroads use electronic monitoring equipment instead of manual inspections by crewmen to test brakes on freight and passenger trains.

Labor groups have criticized this equipment on the grounds that it may not be able to withstand drastic weather changes, its batteries are not sufficiently durable, and they cannot detect things like shifting loads, dragging equipment, and hot wheels. Is this equipment as good or better than manual inspection—and what is the status of your proposed rule?

Mr. RILEY. A final disposition of that rulemaking process is imminent. And now, as to the equipment, itself. The manual inspection that is done at the end of the train, which we call the intermediate power brake test is one in which the employee goes to the back of the train, does a pressure test and watches the brake set and release to determine their functioning. The employee then gets back in the train and the train pulls away. That was perfectly adequate at a point in time when we did not have technologies that would allow us to monitor the condition of that system on a continuing basis. However, any system that can only check the functioning of a brake system when the train is stopped is not going to stand up by comparison to a system that can check the functioning of that brake system at any point in time while the train is moving. The manual inspection system gives you a snapshot of what is, in effect, a continuing process. And there are many ways that a brake system can fail while a train is mobile.

The telemetry device, if and when perfected, provides the opportunity for an engineer to sit in a cab and know every second of the movement—what the status of his brake system is to catch leakage even before it reaches a point where it could throw fail-safe mechanisms into play and isolate where in the train a problem has occurred. I think that, when we had the hearings on this, one of the engineers testified that there are also advantages in train control and train handling that come from the type of data that a telemetry device reports.

That is why we commenced the rulemaking proceeding. Now it is controversial because right now there is an individual who performs that task manually at the end of the train but I have to tell you that I cannot take the position that we are going to stand in the way of technological developments that can improve railroad safety because they might violate a work rule. I just cannot take that position. And that is why we commenced the proceedings. We all know that if, in fact, you can develop a telemetry device that will let you know every second of the time what your brake system is doing, you have a better system than one in which you can judge that status only once every 500 or 1,000 miles. The point of the hearing was to determine whether or not technology has advanced to the point where we can allow that type of system to come into play and secondly, under what conditions should we permit it. That is what the hearing was about. I thought that, frankly, it was one of the best hearings we had. We had good testimony on it.

The arguments are about, is it sufficiently durable, can it withstand weather changes, and well, can it detect things like shifting loads? My answer to that is we did an extensive field testing program on the equipment. I did not act on this petition when I first received it, because I did not think that we had answers to some of those questions. We field tested some of these things for over—in two segments, the equivalent of about one year.

And we used a statistically significant sample. If there ever were a failure of a rear-end telemetry device, you just go back and test it the way that you used to test it. It is not a safety exposure. The added capacity that you lose if the telemetry device goes down, simply takes you back to the manual inspection that you have today so that it does not render the system less safe.

And finally, as to detecting shifting loads, that is an argument that goes to whether there ought to be a caboose and whether there ought to be an individual on the caboose. This is an entirely separate issue. What we are saying is whether there is a caboose there or not, it may well be that electronic telemetry of that brake system is safer than manual inspection and a person inspecting a brake system is not looking for shifting loads. It is a different issue.

BRAKE TESTER RULEMAKING

Mr. LEHMAN. A labor official has accused the FRA of having predetermined the results of your brake tester proceeding and that your hearings on this issue were "nothing more than going through the motions." How do you respond to that?

[The information follows:]

On July 11, 1983, the AAR petitioned the FRA requesting an amendment of the Railroad Power Brakes Regulation. Specifically, the petition relates to Section 232.13 (Intermediate Terminal Train Air Brake Tests). The original petition was amended on November 8, 1983, however, the petitions are very similar in purposes.

The AAR requested that Section 232.13 be changed to delete language requiring use of caboose gauges and physical checks of brakes on the rear car of a train during intermediate train air brakes tests. They stated that the same information can be obtained by use of telemetry devices.

On June 5, 1984, FRA conducted a safety inquiry hearing in response to AAR's petition. The purpose of the hearing was to develop a record so that it may be determined whether there is sufficient factual basis to take action that is substantiable either from a legal or a safety prospective relative review of the power brakes regulation.

In order to respond to the petition, it was necessary that the FRA gather data relative to the feasibility of the railroad safety operating trains and conducting intermediate type train air brake tests by the use of telemetry devices. FRA authorized six major carriers to test telemetry devices on specified trains.

The test railroads have provided monthly reports containing data relative to the reliability of telemetry devices. These written reports from the carriers indicate that the reliability factor is 98 percent. This was derived from results of 142,000 conductor trips. On October 23, 1985, the FRA conducted a second safety inquiry to obtain additional information to assist in evaluatiog the safety aspect relative to the use of telemetry devices.

The statement regarding the FRA having predetermined the results of the above proceeding is unfounded; all comments received were given due consideration relative to future decisions concerning amendments to the power brakes regulation.

TRESPASSER ACCIDENTS

Mr. **Lehman**. Do people still catch freight trains and ride the rails?

Mr. **Riley**. They do. As a matter of fact, my wife's brother did that for quite a while.

Mr. **Lehman**. I know that I had friends growing up who lost their arms in railroad yards.

Do you still have accidents from that?

Mr. **Riley**. Well, we do have them. In fact, trespasser accidents and fatalities are one of the biggest categories and the fastest—up until this year, it has been the fastest increasing category. Now, for the first time in this decade the number of trespasser fatalities went down this year. But I cannot give you any logical reason. It went up 35 percent over the last 5 years.

Mr. **Lehman**. Give us some numbers on that just for the record.

[The information follows:]

Year	Trespasser fatalities (excluding rail-highway crossing trespasser fatalities)	Fatalities/million train miles
1985 (preliminary)	399	0.678
1984	499	.842
1983	399	.715
1982	414	.722
1981	466	.689
1980	457	.637
1979	421	.551
1978	403	.536
1977	403	.537
1976	385	.497

REVISED SAFETY PROGRAM GOALS

Mr. **Lehman**. Getting back to the Secretary's Safety Review Task Force report, they did make several recommendations worthy of comment. First, they recommended that you set distinct goals for the five priority safety areas identified in your system safety plan instead of an across-the-board goal as has been done in the past.

Do you plan to make a more detailed analysis of what can be achieved in each program area and set your goals accordingly?

The four program areas are: hazardous materials release rates; passenger train fatality rates; railroad employee fatality rates; trespasser fatality rates.

Mr. **Riley**. I think that the Secretary's Task Force's criticism was absolutely correct. In fact, it was something that I resolved to change when I came here. And the five year goals that we are operating under now, which were set before I came here, were just a lump percentage. I believe the percentage was 20 percent and the goal was to do a 20 percent across-the-board cut. That does not correlate to any assessment of what we might be able to achieve through programmatic changes. And you know, a goal is designed to do a lot of things. A goal is designed to be an incentive for progress, and it is designed to be a benchmark against which you can measure progress.

And if that goal is not a realistically tailored objective you defeat both of those purposes. So I can tell you that FRA will not again set an across-the-board goal for all areas, it will be a program related goal.

Mr. Lehman. What is the time element on that?

Mr. Riley. Well, when does the five year plan end, Joe? I do not know the answer to that.

Mr. Walsh. We are working on that right now.

Mr. Riley. But when does it expire?

Mr. Walsh. The expiration date is just coming up so that we are trying to come up with some real goals and objectives that are attainable and are really safety related.

Mr. Riley. So, I guess I will have an opportunity to do that then in the near future.

TRESPASSER FATALITY INCREASES

Mr. Lehman. I notice that the task force report shows that the trespasser fatality rate has increased by about 35 percent comparing the 1981 to 1984 time period against the 1976 to 1980 time period.

What is the reason for this dramatic increase and what are you doing about it?

[The information follows:]

We do not have a rational reason for the increase in trespasser fatalities from 1981-1984. Short of fencing the entire railroad right-of-way which is not economically feasible, it must be recognized that very little FRA or the railroads do will have a dramatic impact on trespasser fatalities.

In an attempt to reverse this trend we are placing a greater emphasis on education. At last year's Operation Lifesaver presentations, to school and civic groups, emphasis was placed on the dangers of trespassing on railroad property. Preliminary 1985 figures indicate that trespasser fatalities were reduced over 1984 numbers and we believe that these presentations may have played a role in this reduction. Additionally, a portion of the Fourth National Operation Lifesaver Symposium being held on June 16-19, 1986, in St. Louis will be dedicated to trespasser countermeasures.

REVISED SAFETY PROGRAM GOALS

Mr. LEHMAN. Please provide for the record, a listing of the task force recommendations on pages 11 and 13 of the report along with your response to each.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATIONS

That FRA select safety goals for the next five-year period based on an analysis of what can be achieved through specific program activities.

That FRA initiate a review of the methodology of the National Inspection Plan (NIP), including measures to mold the regional submissions into a fully integrated national plan, to ensure its continued effectiveness.

FRA RESPONSE

It has always been my view that the five-year goals (which were set, incidentally, before my tenure) were numbers picked out of the air, rather than numbers that actually related to an assessment of achievable progress. In some cases, we've exceeded those numbers by large margins; in others the goals were unachievable by any meaningful assessment. As we quantify our plan during the next year, we will select meaningful targets, individually tailored to each category, rather than simply taking an across the board percentage as was done in the past.

FRA's overall objective is to have a safety program that is designed to reduce injuries and fatalities sustained by employees, trespassers, and those involved in grade crossing accidents, and to reduce the risks involved in rail passenger transportation and rail hazardous materials carriage. These general goals will be the focus applied to specific annual safety objectives through the NIP development process. The NIP is used to identify and quantify safety problems within each region and to describe the extent that each activity alleviates specific problems. Recognizing that improving the safety statistics depends on the cooperative efforts of the FRA, railroad management, railroad labor, State and local governments, and a number of other interested parties, the NIP will fully address FRA's role vis-a-vis these other parties.

SCHEDULE

Completion of improved NIP for 1987—November 1986.

SAFETY INSPECTOR WORKFORCE

Mr. **Lehman**. The task force also said that you had no formal plan or procedure for distributing your safety inspector workforce to ensure maximum flexibility or effectiveness. The Inspector General also identified this as a deficiency. How do you allocate your workforce—how do you keep up with shifts in the industry?

Mr. **Riley**. Well, I will concede that we do not have a formal plan or procedure and I think that we probably ought to put one down in writing but that does not necessarily mean that the system is ineffective.

And I am going to follow through on the recommendation by putting down in writing the benchmarks that we use in making those allocations. But there are two points I would raise to you.

First, individual inspectors may be listed as motor power inspectors, or signal inspectors, but they are crosstrained in two to three other disciplines. And so in fact, an individual inspector is capable of and does, in fact, perform inspections in a number of different disciplines when they go out on the road. If you look at any of our regional offices, you will see people assigned by title. The reality, however, is that their capacity is far beyond the limitation that is implied by their title.

Secondly, as to allocation from district to district, we tend to use our inspectors, now that we are doing major assessments, by pooling personnel from different states into the single operating assessment as we did on SEPTA. And we create our flexibility through pooling but there were two things I learned from the Secretary's report and one of them is that we ought to put all of that down in writing so that it is understood and the second is that they made some comments on population shift, which I thought were well taken and we may adjust our allocation procedures to reflect that advice.

Mr. **Lehman**. Please provide for the record a listing of the task force recommendations on page 17 of their report along with your response.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA expedite development and implementation of a nationwide inspector allocation plan based on accident rates and projections of future risk.

FRA RESPONSE

FRA has just completed a nationwide inspector allocation model that has 9 independent variables. The model is a quantified process to allocate inspectors to the 8 regions. An extensive analysis of the readily available data shows that the following factors are the best combinations to use: number of casualties, number of accidents, number of railroad employees, hazardous material carloads, passenger traffic, population density, tons shipped, miles of track, and territory size. These variables as a group tell us how the safety inspectors should be divided among the 8 regions.

Another model will be developed to analyze how the safety inspectors should be divided among the disciplines. The following types of variables will be used to determine the best combination of factors for making quantitative projections: inspections, complaints, accident investigations, waivers, assessments, accidents, and casualties. This model will be completed in July 1986 providing adequate data is available for such a detailed analysis.

SAFETY DEFECT FOLLOW-UP

Mr. LEHMAN. The task force also reported that rail labor representatives had criticized the FRA for not adequately following up on the defects that are uncovered to ensure that the railroads correct them.

Do you have a systematic system in place to follow up on the defects you uncover? If not, why not?

Mr. RILEY. We have systems in place and they come in two forms. When we do a railroad assessment, we will give a temporary grace period to that railroad to fix defects that were found while we did the assessment. We do a number of follow-up meetings to weigh the progress in correcting those deficiencies. At a point in time, we then shift back to the normal site and fine operation. But there is a follow-up procedure for assessments that centers on meetings, with senior carrier personnel to discuss the big picture issues that come up in assessments.

Now, on our individual inspections what we do varies with the discipline. On track and signal inspections, our forms, the forms that have to be remitted back to FRA, have on the form a corrective action report where they report back to us on the corrective action that they have taken on track and signal matters.

Now, there is a curious quirk in a sense. We do not require it, but everyone does it and we get 100 percent compliance. If there was ever any fall off in compliance we would alter our rules to mandate it.

On moving equipment, recognizing that what an inspector must do when he finds a defect in the mode of equipment is have it sent somewhere else. We have given the inspector discretion to determine whether he will demand a corrective report or not since it will sometimes cross two or three district lines.

However, all of the repair records, and all of the repair facilities are available to and audited by FRA so that we do have a follow-up procedure in effect. And I will leave the follow-up form with the Committee so that you can get a sense of how it is done.

Some people have raised the issue of why do we not require it. Let me tell you that we do not require it and the reason that we do not is that it is done as a matter of practice. And I have to say that we have never had any difficulty in getting any filing on these reports, and if we did, we would mandate it immediately and we may at some point mandate it just as a matter of good practice.

MANDATORY DEFECT CORRECTION REPORTS

Mr. LEHMAN. Please provide for the record, your response to the task force recommendations found on page 20 of their report.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA consider developing a more systematic procedure for verifying that defects have been corrected.

FRA RESPONSE

FRA utilizes two defect correction verification procedures—one designed for follow up on system assessments, and one adapted to the different problems that arise in following up routine inspections.

Over the past year, FRA has formalized post-assessment followup procedures which had previously been more a matter of practice and tradition. Those procedures were reevaluated and refined following the BN and SEPTA assessments, the two most difficult this agency has yet performed. We are now documenting those procedures, and railroads will be apprised of both the process and their responsibilities under it via written guidelines for conducting railroad safety audits and assessments.

It is important to note that while these procedures have recently been refined and documented in written form, we view that refinement as an ongoing process. Each assessment teaches us something, and we intend to continue improving our procedures as new lessons are learned. We will continue to seek more effective ways to determine from post-assessment investigations whether a carrier has corrected the items of concern found during the initial assessment.

There are special problems that present themselves in following up routine inspections, particularly those involving rolling stock. It is and has been our policy to mandate immediate correction of serious defects found in the course of routine inspections. In cases where violations are more technical, or present minimal exposure, we have endeavored to leave our inspectors with discretion to balance whether their time can be most effectively used in follow up, or in conducting additional primary investigations. Since the same individuals perform both tasks, there is a tradeoff inherent in all followup activities, and it is our belief that a system which grants inspectors' discretion to weigh the tradeoffs on a case by case basis where technical or minor violations are involved best serves the interest of safety enforcement. We are, however, reassessing our followup procedures for material defect correction, particularly in light of our experiences in the recent SEPTA assessment. Following that reassessment, it is our intention to clearly appraise all regional directors on the procedures to be used for follow up on the more important defects.

PENALTY ASSESSMENT VARIANCES

Mr. LEHMAN. An historical listing of FRA violation reports and civil penalty settlements on page 19 of the task force report shows extremely wide variances from year to year. The number of violations ranges from a low of 1,988 to a high of 8,041 over the last five fiscal years, and the dollar value of civil penalties ranges from $1.3 million to $15.3 million over the last nine fiscal years.

These variances bear little direct relation to safety trends in this industry. Why have you had such wide variances in your inspection results? And since there does not seem to be a correlation with safety trends in the industry, could we conclude that your inspections program is not having a national safety impact?

Mr. RILEY. I think the penalties assessed within a range of normal deviation are fairly common from year to year. The penalties collected vary widely and here is why. There have been periods of time in which FRA has been very inactive in collecting civil penalties; very inactive. Now, the two big years are frankly this year and the $15.3 million figure that you said. The year that the $15.3 million was collected, FRA had allowed some of their fines to go years uncollected and a big effort was made to collect all the past fines, and I believe that was 1979 or 1980.

And that blew the collections for that year out of all proportion to the penalties assessed. I discovered that there were quite a few uncollected fines when I came here, particularly from the western railroads and we began a collection effort. And if you look at the amount that we have taken in in penalty assessments, I mean taken in and actually collected over my three years, it looks like it has steadily increased every year.

Well, the reason for that is not that we are assessing more penalties, the actual number of assessments is pretty standard, but the reason is that we are going around and collecting the back penalties that were not being collected.

It is my own view that a fine that is assessed, and not collected is a very ineffective safety lever and we have cut the processing time down very sharply and we no longer tolerate long delays in the payment of fines and I do not think that we should. I think that the fines become very ineffective if the carrier can begin to think that maybe he will not have to pay them.

Although the assessment of the fine, frankly, is really what is the safety lever more than the amount, because when a fine is assessed, the local manager has to requisition money for it and report why it was assessed and that is why the accountability comes from.

What we have really found out is that it is not so much what you have assessed, it is the fact that you have assessed it that makes the difference. Even looking at our own records, where we decide what to assess on a case-by-case basis, we have really discovered that the hot water that you put the local guy in when you assess the fine is what does the damage. That goes on his record, internally within the company. And if you are not following through on those assessments and are not collecting them, you do not do a lot of damage.

Jack wanted to add something on this.

PENALTY ASSESSMENT ADMINISTRATIVE PROCESSING

Mr. MASON. Mr. Chairman, a couple of things. I have been at the agency a little longer than John and have been the Chief Counsel. Our job is to take the proposed assessments that come in from Joe Walsh's safety inspectors and turn them around into what are akin to informations filed by United States Attorneys. They become legally sustainable documents with evidence attached and the like and we then send them back out to the railroads and they become the official administrative charge of the agency.

I notice that rail labor has suggested in the last couple of years that a vast number of proposed assessments somehow get lost in our office and do not get sent back out to the field. The number sent back is about 99.5 percent and the ones that we do not send out to the field, we discover have legal defects but that is a very small percentage. That is the first point.

The second point is that when I started we did have a tremendous backlog of lawyering to do. We had lots of cases that we had charged the railroad with but, our negotiation and settlement process was to the point where we were negotiating over fines that had been assessed two or three years previously and the railroads legitimately complained that they were having to settle a lot of stale complaints.

I instituted a process with the help of the attorney in charge of our safety division and when John Riley came on board, he put that as one of his top priorities in terms of resources, computers and the like, and we have brought the lag time from the time that it comes in to our office to the time that we settle with the railroad on a particular amount, down to about a year. And we are very proud of that process so that now the railroad lawyers and the railroads are negotiating and dealing with claims that are not three or four years old but happened anywhere from a year to 15 to 18 months earlier.

DISCRETIONARY ISSUANCE OF PENALTY ASSESSMENTS

Mr. RILEY. One thing that I think is not widely understood is that each of our penalty assessments is not a fine in the sense that one envisions a fine. It is a small lawsuit to which there are defenses and at times the levying of that penalty creates an incentive for a railroad that is going to contest it not to fix the problem.

And I felt very strongly that the proper working of this system was contingent upon giving our inspectors the discretion about when to fine and when not to fine. There are times when a railroad is absolutely uncooperative and you have just plain got to fine them.

There are other cases, however, where the key thing is to eliminate an imminent safety problem, and we have authorized our inspectors to say you have got a problem with that signal and I am going to be back tomorrow and if it is fixed, you are not going to get a fine, but if it is not you will.

And in those cases, we have found that the failure to levy in return for immediate repairs is the most effective way to get the job done quickly. We hire all of our inspectors out of the railway unions and because the experience they require compels them to be railroad employees, we give them that discretion to make those judgments on a case-by-case basis.

I think that discretion is the key to the safety program. Many of the violations of our rules are very technical and we will say, for example, exactly what the camber has to be on a track. You can say exactly what the gauge has to be. If you are a tenth of an inch out of sync, you are in violation of our regulation and we will, in fact, note that violation. However we are not going to start a one-year civil assessment proceeding on a one tenth of an inch violation because you cannot even feel it much less affect safety. Nonetheless, to try to keep the railroads as perfect as we can keep them and we are not perfect, we tend to write up every violation that we see no matter how small.

And so the art of this is an art of constant in the field decision making as to when to fine, when not to fine, and how to achieve the best results. And I do not know that like any other collection of human beings, we always make those decisions right but I think that a system that creates that flexibility is far preferrable to one that removes it.

And that is how we operate.

PENALTY AMOUNTS

Mr. LEHMAN. What is the average amount of the FRA civil penalty assessment, and do you believe it is large enough to get a railroad's attention?

Mr. RILEY. People are saying on both sides of me that they can give you that data. I cannot. So let me yield first to my right and then to my left and hopefully they are going to be consistent.

Mr. LEHMAN. Do you want to submit it for the record, or do you want to give it to me now?

Mr. MASON. The question as stated is a bit difficult and we will submit it for the record, because it is hard— a straightforward answer would be a very misleading answer.

Mr. LEHMAN. Also what happened to those very romantic songs about the railroad, like the Wabash Cannonball and the Casey Jones?

Mr. RILEY. To be really honest about it, when I was in college I helped work my way through college as a country music singer and my greatest ambition is to sing them all some day on a record album, which I will give you if I ever do it.

Mr. LEHMAN. All right, please insert the information to the earlier question in the record.

[The information follows:]

There is no simple answer to this question. FRA assesses civil penalties under the authority of a number of statutes that prescribe a variety of minimum and maximum penalties. Moreover, the initial civil penalty assessed for a given violation depends, for the most part, on the penalty schedules FRA has developed to assess higher penalties on more serious violations and lower penalties on less serious violations.

The maximum authorized penalty for rail safety violations is $2,500 although FRA can assess a penalty of up to $10,000 for violations of the Hazardous Materials Transportation Act. Thus, under one statute a claim could be assessed for $500 and (where the statutory $250 minimum does not apply) settled for $100; under a second statute a claim could be initially assessed for $1,000 and ultimately settled for $650, while under a third statute a claim could be assessed for $9,500 and settled for $7,500. Obviously, no useful figure can be derived from averaging these data.

FRA has statutory authority to compromise all initial civil penalty assessments, and FRA uses the negotiation process aggressively to serve the cause of safety. Although with large railroads many cases are combined on a single agenda to facilitate the logistics of negotiation, FRA insists on negotiating every case individually to ensure that the merits of each case are considered and that any settlement reflects the defenses on mitigating circumstances present. FRA considers such factors as severity, culpability, history of violations, and remedial steps taken. FRA's civil penalty process thus provides a forum for communication with railroads about current compliance problems, whether of a type, *e.g.*, track or signal, or location or division. It is a valuable opportunity for FRA to keep the attention of railroad management and technical and legal staffs and thereby to have an immediate impact on safety.

The civil penalties authorized by the statutes enforced by FRA have not been adjusted for many years. FRA is now considering whether to seek an increase in the maximum and minimum levels prescribed.

SAFETY DATA IMPROVEMENTS

Mr. LEHMAN. Please provide for the record, a listing of the task force recommendations on safety data along with your response to each.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA continue its efforts to encourage the regions to use on-line capability for obtaining safety data and the development of interactive capability for data submission

FRA RESPONSE

The FRA is constantly improving the current on-line safety data base used by the regional offices. For example, additional elements of data that are of value to the regional work force, as well as various displays of existing data to make its utilization more effective, are being added. Regional managers will be able to use the additional information to do more effective day-to-day planning.

The FRA agrees with the Task Force's position regarding the importance of having timely safety data information for use by the field staff. Of the different ways to assure this outcome, FRA does not believe that an interactive capability for data submission is the best approach. This technique would provide no benefit in terms of timeliness and would, in fact, introduce the serious risk of disruptive error given the many different persons and locations that would be involved in data entry. Regional submission of inspection data using an interactive capability would tie up valuable regional resources and would lessen the currency of the data bases. Safety inspectors would have to reduce the time spent inspecting in order to allocate time to enter the data from the inspection forms. A requirement that the data be entered after each individual inspection would exacerbate this problem.

At this time, inspection reports are sent to the keypunch contractor within three days after the inspection, and the data are available on the computer within seven business days after the inspection report is received. This method provides timeliness of meaningful safety data while utilizing our field force most efficiently.

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA develop and implement an improved format for the presentation of safety statistics. The format should clearly show the total number of fatalities and injuries and identify the types of events with which the fatalities and injuries are associated.

FRA RESPONSE

The FRA Accident/Incident Bulletin and Rail-Highway Grade Crossing Accident/Incident Bulletin are published annually in June. Both publications are a compendium of statistics involving railroad related accidents, injuries and fatalities. These publications are intended to serve the needs of railroad labor, management and the FRA. The format and types of tables have been requested by rail labor and management. However, new tables and charts will be designed to accommodate the non-railroad user and to better display safety trends and specific safety problems in the industry.

Planned actions	Schedule
Start design on new tables and graphs	November 1, 1985.
Complete design	December 31, 1985.
Coordinate with rail labor and management and non-railroad users	January, February and March 1986.
Implement	April 30, 1986.
Publish in 1985 Bulletins	June 15, 1986.

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA, in cooperation with the States and the rail industry, initiate special efforts to encourage the timely submission of information to support the voluntary Grade Crossing Inventory Data System.

FRA RESPONSE

FRA agrees with the need to place special emphasis on the timely submittal of grade crossing data. In cooperation with FHWA, FRA is now conducting grade crossing seminars for railroad, States, and local officials. The need for the timely submission of information in support of the Grade Crossing Inventory is being stressed at these seminars. In addition, FRA continues to meet with State and railroad officials and to encourage them to submit updating material for the Inventory. In FY 1985, more than 80,000 changes were processed.

SCHEDULE

Ongoing.

TANK CAR APPROVAL AND DESIGN

Mr. **Lehman**. Please provide for the record a listing of the task force recommendation on tank car approval and design along with your response.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA, in cooperation with RSPA, establish a closer liaison with the AAR Tank Car Committee during the rail tank car approval and design process; develop procedures to assure improved oversight of rail tank car construction and study the feasibility of adopting the construction inspection requirements called for in DOT's recently issued NPRM HM-183 and HM-183A, Requirements for Cargo Tanks; and establish procedures for spot checking existing rail tank cars to assure proper construction.

FRA RESPONSE

The FRA, in cooperation with DOT's Research and Special Programs Administration, plans to take a more active role during the rail tank car approval, design and construction process.

Planned actions	Schedule
Conduct technical exchanges between FRA and AAR Tank Car Committee on current tank car problems to (a) clarify role and procedures of the AAR Tank Car Committee and (b) improve construction inspection requirements.	First meeting—November 4, 1985. Future meetings as needed.
Prepare FRA Technical Bulletin on spot checking existing railcars with regard to construction, maintenance, and repair.	Draft Technical Bulletin November 28, 1985. Final Technical Bulletin—December 27, 1985.
If required, develop rulemaking	Recommendations to RSPA—January 31, 1985. If needed, NPRM issued—June 30, 1986. If needed, Final Rule issued September 30, 1986.

EMERGENCY RESPONSE GUIDE

Mr. Lehman. Please provide for the record a listing of the task force recommendation on development of an emergency response manual along with your response.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA expedite development and issuance of an emergency response manual or guide expected to result from the present study with the AAR and the Air Force.

Planned actions	Schedule
Develop training film on emergency response procedures for railroad accidents involving hazardous materials.	Completed (August 1985).
Develop manual on emergency response procedures for railroad accidents involving hazardous materials.	Draft Manual—January 31, 1986. Final Manual—February 28, 1986.

RAIL-HIGHWAY CROSSING SAFETY REPORT

Mr. Lehman. Please provide for the record a listing of the task force recommendation regarding implementation of the "Rail-Highway Crossing Safety Report" along with you response.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA give top priority to implementing the recommendations of its July 1985 Rail-Highway Crossing Safety Report and to participating in Operation Lifesaver.

FRA RESPONSE

In the July 1985 Report, the FRA commits itself to fulfilling ten distinct tasks dealing with low cost crossing safety improvements, the development, maintenance and application of data and procedures by Federal, State and railroad offices; and Operation Lifesaver. Specifically:

Planned actions	Schedule
With FHWA, sponsor low cost safety improvement seminars	Underway.
Prepare a pamphlet promoting low cost alternatives	Draft by January 1986. Final by April 1986.
Involve FRA field forces in corridor projects	Underway.
Utilize accident severity prediction capabilities	1986.
Develop automated procedure for assisting corridor selection process	October 1986.
Evaluate Texas' 800 number problem notification process	July 1986.
Implement National Crossing Inventory file changes	July 1987.
Investigate evidentiary exclusion for project planning materials	July 1986.
Develop Operation Lifesaver materials	October 1988.
Establish FRA emphasis on Operation Lifesaver's enforcement program.	Completed.

GRADE CROSSING SAFETY EDUCATION

Mr. LEHMAN. Please provide for the record a listing of the task force recommendation regarding grade crossing safety education along with your response.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA continue its efforts in working with the railroads to reduce trespasser and grade crossing fatalities through education, eliminating hazardous conditions where appropriate, and working with local law enforcement officials.

FRA RESPONSE

FRA, in cooperation with FHWA, is sponsoring grade crossing safety improvement seminars for railroad, State, and local officials.

In addition, the trespasser problem will be discussed with industry leaders over the coming year and will be a specific topic during the 1986 Operation Lifesaver Symposium.

SCHEDULE

Seminars are underway.

Symposium is scheduled for June 16-19, 1986.

EMPLOYEE SAFETY EMPHASIS

Mr. LEHMAN. Please provide for the record a listing of the task force recommendation on rail employee safety emphasis and your response.

[The information follows:]

SAFETY REVIEW TASK FORCE RECOMMENDATION

That FRA continue its emphasis on improving rail employee safety and reexamine its current policies and procedures, in cooperation with OSHA and the rail industry, to determine if additional measures can be taken to improve employee safety.

FRA RESPONSE

FRA will hold a Safety Inquiry in the near future to address the matter of locomotive safety and especially the safety of engineers and other cab occupants. The inquiry will involve railroad labor, management and suppliers in an active role to explore the issues, document recent safety improvements, determine the magnitude of the safety problems inherent in locomotive cabs and to establish a series of actions that can be taken toward improving the level of safety for engineers and other cab occupants. Among the issues certain to be addressed are improving crashworthiness, reducing noise levels, and improving engineer vigilance devices. The inquiry will also be useful in drawing out critically needed cost-benefit data for use in evaluating needs and comparing alternative approaches to improving design and equipment.

By gaining industry and labor commitment to the linkage between safety and job skills training, FRA can act as a catalyst to sponsor employee involvement projects to improve safety performance in all major sectors of railroad work life. FRA's prior experiences with labor-management cooperation to improve productivity and efficiency in rail terminal operations and to implement employee assistance programs to combat drug and alcohol abuse point out the potential value of having employee involvement in the design of safety training. FRA is, therefore, working to develop and implement safety training programs for railroad employees through cooperative efforts with railroad management and rail labor.

FRA initiated a pilot program showing the potential for computer interactive videodisc technology for safety training of railroad employees. This pilot project was a cooperative endeavor involving FRA, the Port Terminal Railroad Association, and rail labor and was well received by all the parties. FRA plans on expanding this training through cooperative arrangements with the railroads. During the coming year, we expect to inaugurate safety training programs with the Northeast Corporation (NIRC), Amtrak, and the Union Pacific Railroad. The cost of this training will be shared by the participating railroads, and the training will cover such specific safety areas as carrier safety rules training, maintenance-of-way employee safety, hazardous materials emergency procedures in the event of hazardous materials accidents, and crew training for passenger evacuation procedures.

FRA hired four regional training specialists in 1983. If FRA's monitoring or assessment activities indicate deficiencies concerning a railroad's compliance with operating rules or poor train handling, these individuals will work cooperatively with the railroad to resolve the problem. The training specialists are also engaged in emergency response training with railroads and local emergency response personnel. FRA plans on hiring an additional training specialist in FY 1987 to assist the railroads in improving carrier programs dealing with the problem of alcohol and drug abuse.

The more than $6 billion invested in track, roadbeds, track structures and equipment, and signal equipment from 1979–1983 as a result of railroad deregulation directly contributed to a substantial improvement in railroad safety. Since 1979, accidents caused by track and equipment failures have been reduced by 67 percent. Now that the problems associated with deferred maintenance have been virtually eliminated, FRA's safety priorities have turned toward the difficult task of reducing the number of human factor accidents and injuries.

FRA's final rule on alcohol and drug abuse in the railroad industry not only includes provisions covering prohibition, testing for cause, post-accident testing, preemployment drug screens and improved reporting, but also deals with the need to identify and rehabilitate troubled employees.

In addition to the regulatory program on alcohol and drug control, FRA has actively promoted the Operation Redblock developed by the Brotherhood of Locomotive Engineers and the United Transportation Union on the Union Pacific Railroad. This program involves active peer pressure to keep impaired employees out of the work force. Agreements are negotiated on the railroads that provide for the identification of employees who have an alcohol or drug problem. Arrangements are made for self or co-worker referral to Employee Assistance Programs where action is taken to assist the troubled employee. The railroads agree not to take disciplinary action against employees and pressure their employment status. FRA sponsored four regional meetings to promote this program in 1985. While the program is relatively new, it is widely supported by railroad labor and management, and it holds significant prospects for reducing the threat to employee, passenger, and public safety in future years.

Questions Submitted for the Record

Mr. LEHMAN. We have some additional questions from Mr. Conte and Mr. Pursell which you can answer for the record.

UNION PACIFIC INTEREST IN CONRAIL

Mr. CONTE. Mr. Riley, there have been reports in the press that the Union Pacific Railroad, under the new leadership of our old friend Drew Lewis, is considering a bid for Conrail.

First of all, let me ask if you have received any information indicating that such a bid is likely?

[The information follows:]

Mr. Lewis has not contacted the Department concerning the possibility of the Union Pacific making a bid for Conrail. In published reports, Union Pacific has denied that it was considering making such a bid and we have no information indicating that such a bid is likely. To the contrary, representatives of Union Pacific have called the Department to indicate that published reports that the Union Pacific was interested in purchasing Conrail were purely rumor and that the Union Pacific has no interest in making a bid for Conrail.

Mr. CONTE. Was the Union Pacific one of the railroads that you approached in your preliminary solicitation of bids for Conrail?

[The information follows:]

In its preliminary solicitation of bids for Conrail, the Department contacted all major Class I carriers plus more than 100 corporations who had assets sufficient to acquire Conrail. The Union Pacific was one of the corporations contacted.

Mr. CONTE. If the Union Pacific were to come in with a bid for Conrail in the near future, in an amount greater than those that are currently on the table, what sort of consideration would it receive from the Department of Transportation?

[The information follows:]

We have no evidence presently to suggest that Union Pacific intends to submit a bid for Conrail. If one were submitted, however, the Department would treat a Union Pacific bid as it has treated other late bids such as those from Morgan Stanley and Allen & Co. We would submit the bid to our investment advisor, Goldman, Sachs & Co., for review and answer questions concerning the bid from members of Congress. We will continue to pursue the course Congress set for us in NERSA to sell Conrail as an entity as soon as possible to the purchaser best meeting the statutory criteria for the sale.

CONRAIL MERGER WITH WESTERN RAILROAD

Mr. CONTE. Would you comment in general about the advantages or disadvantages of combining Conrail with a Western railroad?

[The information follows:]

A merger of Conrail with a Western railroad might eliminate some of the antitrust problems that have been identified with the merger of Conrail and the Norfolk Southern. However, if a Western railroad acquired Conrail, resulting in the Nation's only transcontinental rail system, other major railroads might feel that their business would be threatened by such a system.

These carriers would engage in retaliatory measures, including possible additional mega-mergers, which would render Conrail's gains transitory at best. Because the other Eastern carriers possess broader market coverage and superior traffic bases, compared to Conrail, such a series of events could render Conrail even more vulnerable than it is today relative to its competition. The same events could also precipitate significant damage to the rail infrastructure in the Northeast as Conrail cuts back track and employees to serve only its long-haul east-west traffic on its busiest lines.

CBO ANALYSIS OF CONRAIL SALE

Mr. CONTE. As you know, the Congressional Budget Office's analysis of the budget indicates that simply maintaining the status quo for Conrail will return approximately a billion dollars to the Treasury over a five-year period.

That makes the Norfolk Southern's $1.2 billion bid look somewhat less impressive, given the service and competitive uncertainties associated with that bid.

Would you comment on the CBO analysis?

[The information follows:]

An extensive critique of the CBO analysis has been provided for the record. Briefly, our critique indicates CBO's estimates are seriously flawed in several critical areas:

CBO assumes the worst case scenario in terms of tax impact despite Treasury's statements to the contrary. CBO claims a tax loss of $500 million over a five-year period compared to Treasury's January 23, 1986 gross estimate of $174 million with a present value of $125 million.

CBO ignores the time value of money making net benefit comparisons among alternatives completely misleading.

The report ignores significant benefits associated with a Norfolk Southern purchase in terms of shipper and community impacts, transportation efficiencies, carrier viability and job stability in contrast to a Federally-owned Conrail.

The CBO assumptions, in the absence of a sale, that Conrail would continue to pay no state income taxes or labor protection payments result in a substantial overstatement of Conrail's net income from which interest and dividend projections are determined and are inconsistent with the intent of NERSA.

The CBO study is absent any type of financial impact assessment from payment of interest and dividends to the Federal Government on Conrail's viability.

ICC EVALUATION OF NORFOLK SOUTHERN

Mr. CONTE. The ICC has classified the Norfolk Southern Railroad as one of the many "revenue deficient" railroads in the country. Is there something wrong with the ICC's methodology, or standard, and if so, does the FRA have its own alternative method of evaluating railroads' profitability and viability?

[The information follows:]

Revenue adequacy, established by the ICC to carry out its regulatory duties under law, is merely one measure of viability, or profitability. FRA, like most security analysts, debt rating agencies and financial institutions, use a variety of measures depending upon the objective. In the Title V loan guarantee and preference share program, we are primarily concerned with the ability of the borrower to repay the debt. In other situations, we have other objectives.

The revenue adequacy standard developed by the ICC has a very unique and distinct purpose. Revenue adequacy is the ICC's term for the criteria it was directed by law to establish in order to ensure that the rail industry could provide a sound transportation system over the long term. Congress recognized that railroads would have to earn returns capable of attracting investment of sufficient capital to maintain equipment and facilities. Carriers that do not meet the standard are allowed an extra measure of rate making flexibility.

We generally support the ICC's revenue adequacy standards. We believe that a cost of capital standard closely matches the language of the statute. It is reasonable to conclude that attracting new capital will only be possible if a railroad is earning a rate of return comparable to the market rate for competing debt and equity investments.

These standards have been evolving and continue to require periodic updating. The ICC and the Rail Accounting Principles Board are now considering modifications. DOT is planning to participate in the revision process.

NORFOLK SOUTHERN VIABILITY

Mr. CONTE. What objective standard does the FRA use to evaluate the Norfolk Southerns viability, and how do Conrail, the Guilford System (and/or its component railroads), and the P & LE stack up under a comparable evaluation?

[The information follows:]

Our primary measure of viability is the ability of a railroad to generate, over the long term, a consistently sufficient level of earnings and cash flow, in spite of economic downturns and changes in the competitive environment. Profitability, liquidity and other financial ratios and factors also come into play. A consideration is the rating of its debt or equity securities by various rating agencies and securities analysts. Overall, a company's ability to generate sufficient cash flow internally or externally, to cover operating costs, and replace or maintain equipment and facilities adequate to retain relatively consistent traffic levels represents the primary determinant of financial viability.

Guilford is presently a regional system that shows a fair potential for earnings growth even absent the acquisition of trackage rights and routes from a combined Norfolk Southern-Conrail. With such acquisitions, and its "windows" to the south and west, Guilford's potential for earnings growth becomes excellent. The *pro formas* that Guilford has supplied show this enhancement clearly, and the Justice Department has hired a contractor to verify the feasibility of these projections.

Our evaluation of the Pittsburgh and Lake Erie takes a different perspective in that it is most likely not viable without the proposed acquisitions, but will have its potential for self sufficiency increased many fold by the additional connections that would be provided under the divestiture proposal. Because its gateways were cutoff by Conrail, the P&LE has been saddled with too much overhead and equipment. The windows on the world it would receive are what the railroad needs to cure its problems.

RAIL RESTRUCTURING AFTER SALE

Mr. CONTE. Would you anticipate continued rail restructurings in a post-Conrail sale environment?

What long term trends do you foresee in the railroad industry?

[The information follows:]

I do not foresee any significant restructuring after the sale of Conrail and the merger of the Santa Fe and Southern Pacific, although there may be some combinations involving the smaller regional carriers in the Midwest. The larger railroads are still implementing the operational changes resulting from the round of mergers that started in the 1970's and even when the efficiencies of those mergers are fully realized, I do not believe there will be another wave of consolidations. Our regional railroad structure generally fits U.S. traffic patterns, and there are not enough high volume coast-to-coast flows to make a compelling case for transcontinental carriers.

There are two other industry trends that I think will become more and more important—total transportation companies and shortline carriers. More railroads are seeking to provide shippers with a central source for obtaining all the transportation service they need, by whatever mode or combination of modes is most efficient. One way to do that is to merge rail operations with truck and barge operations, and become a full service multimodal compay. The ability to provide truck and barge service gives railroads a way to compete more intensely for traffic without extending their rail rights-of-way into new territories.

On the other end of the scale, shortline and small railroads are coming into their own as feeders for national rail systems. These carriers have a different cost structure than the Class I railroads, and can afford to provide pick-up and delivery sevrice for shippers that the larger railroads would lose money on. The major carriers understand that it is in their interest to promote successful shortline operations, because it permits them to eliminate the cost of light-density operations but still keep the volume of traffic those lines generate.

CAPTIVE SHIPPER LEGISLATION

Mr. CONTE. I know that the Administration is opposed to further changes in the Staggers Act at this time.

Could you explain why you do not believe that additional protections for "captive" shippers are necessary?

[The information follows:]

An appropriate regulatory structure is already in place, under the Staggers Act, and it can and will work both to protect shippers from unreasonable rate and service actions and to assure that viable rail service remains available. The Staggers Act was based on a sensitive balance between the interests and needs of shippers and carriers. The great majority of members of all affected groups agreed that the law as it was enacted established a sound framework for regulating the railroads. We remain confident that any details of its implementation to address the concerns of the parties and the intent of the Congress can be resolved administratively, without additional legislation.

As two prime examples of that fact, the Interstate Commerce Commission has recently adopted new standards for deciding maximum rate reasonableness cases as well as cases involving joint rate cancellations, reciprocal switching, and other competitive access issues. One of shippers' greatest complaints about the regulatory system under the Staggers Act has been the absence of clear standards for deciding cases, and, consequently, the difficulty of obtaining final resolutions of rate or other proceedings. The ICC's September 3, 1985, final decision in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines--Nationwide, marked the end of an eight-year wait by railroads and shippers for the ICC to formulate acceptable principles for determining the maximum reasonable rate in coal rate cases, the subject of much of the concern about rail rate levels since the mid-1970's. The ICC is also anticipating taking similar steps for other shippers and commodities. In the competitive access area, shippers were concerned that railroad initiatives to cancel or adjust joint rate arrangements would reduce the availability and effectiveness of competitive rail options. On October 31, 1985, the Commission adopted new standards for reviewing competitive access cases, based on an agreement negotiated and proposed by the National Industrial Transportation League and the Association of American Railroads. With those decisions, the ICC has addressed the two major areas of shipper concern under the Staggers Act. Now that the new rules are in place, the Commission, and shippers and carriers, should be given a chance to see how well they work.

I would also point out that the evidence does not indicate that rate and service abuses have occurred under the Staggers Act. Since the law went into effect in October 1980, rail rates have gone up less than half as fast as rates in the five years preceding the Staggers Act. Overall, rates, including coal rates are lower in real terms than they were when the law was passed.

In a special study of the effects of the Staggers Act on electric utilities--the largest customers for rail-shipped coal--the Department of Energy specifically examined the "worst case" examples of rail rates to coal-burning powerplants, and found that rates have not gone up unreasonably under the legislation. On average, rates have increased by only about 1/2 of one percent above annual inflation; railroads have made little use of the 6 percent per year "zone of flexibility" beyond inflation that the Staggers Act explicitly permitted. To assist export coal shippers, the railroads have not raised export coal rates to the major Tidewater piers since 1982, even to reflect the five inflation-based increases the ICC has approved for all rail rates during that time.

Since 1980, shippers and railroads have entered more than 35,000 contracts covering rail rates and services, most of them incorporating service guarantees and reductions from the published tariffs. Railroad grain rates, covering contract and non-contract shipments, have actually declined by over 25 percent in the last five years. And those benefits spread to shippers of all sizes, as well as to the farmers who produce the grain.

One of the greatest accomplishments of the Staggers Act lies in the encouragement it has given railroads and shippers to negotiate directly with each other, rather than turning to a regulatory body to make pricing or other business decisions. The success of that approach is reflected in the number and range of railroad-shipper contracts as well as the historic agreements reached between the railroads and major shipper groups on the issues of competitive access, market dominance, and ICC contract policies. The Congress intended to encourage the railroads to shift from a focus on meeting regulatory restrictions to an emphasis on improving and marketing service in order to meet competition. The present system, under the Staggers Act, has worked effectively to allow the competitive marketplace--not Government regulation--to shape the commercial relationship between railroads and shippers. That produces better, more efficient results for shippers and carriers and for the economy overall.

RESEARCH AND DEVELOPMENT FUNDING REDUCTION

Mr. **Conte**. You are proposing a dramatic reduction in railroad research and development What ongoing projects or studies will have to be terminated under the proposed budget?

What areas of research would have been covered by your original request to the Secretary that will not be performed under the administration's budget?

[The information follows:]

The large apparent reduction in railroad research and development funding is the result of comparing the Program Level for FY 1986, which includes over $4.6 million in prior year carryover from cost savings, to the FY 1987 budget request. The carryover used in FY 1986 will fund some multi-year projects that continue into FY 1987, and complete others in FY 1986. This approach, plus some stretching out of other projects, will allow us to carry out high priority research activities.

We have not eliminated any of our high priority research projects as a result of efforts to reduce the budget request in light of the deficit issues. However, we have had to extend the estimated time when research results will be available.

LOCAL RAIL SERVICE ASSISTANCE RECISSION

Mr. Conte. There is currently pending a proposed rescission of local rail service funds. My understanding is that these funds, especially the planning component, are generally released early in the year.

Can you explain why this was not done this year prior to sending up the proposed rescission?

Can you tell me how quickly after the rescission period lapses the funds will be released?

[The information follows:]

States must meet a statutory application deadline of October 1 each year in order to be eligible for local rail service assistance planning funds. As soon as an appropriation is enacted, planning grants are then forwarded to the states. This year, however, the House Budget Reconciliation Act prevented FRA from awarding FY 1986 planning funds prior to the rescission request.

The House version of the Budget Reconciliation Act included a provision which eliminated the local rail service assistance authorization effective September 2, 1985. By the time the House and Senate Budget Committee Conferees agreed to a compromise, the Department had decided to submit a rescission request. We understand that the compromise ultimately agreed to by the Conferees would not eliminate the authorization, but would reduce it to a minimum of $12 million for FY 1986.

A total of 38 states have requested $3,545,211 in FY 1986 planning funds. We are prepared to immediately release the FY 1986 planning grants should the rescission period lapse before congressional action.

NORTHEAST CORRIDOR PROJECT ADMINISTRATION

Mr. **Conte**. This year FRA transferred responsibility for administration of the Northeast Corridor project to Amtrak. Does FRA retain any ongoing supervision or technical assistance role in the NECIP effort?

[The information follows:]

FRA retains an ongoing supervisory and technical assistance role in the NECIP. The Stamford Station project and bridge repairs at French and King Streets near Wilmington are under FRA's direct supervision. Cooperative agreements between FRA and local authorities require FRA's continued technical and financial involvement at New Haven, Providence and Boston stations, parking garages at New Carrollton, Maryland and Wilmington, Delaware, five bridges in Connecticut, Harold interlocking just north of New York Penn Station, grade crossing elimination and the Southwest Corridor Project in Boston. The NECIP architects and engineers, DeLeuw, Cather/Parsons, remain under contract to FRA and are heavily involved, along with FRA personnel, with signals contractors. FRA is also administering its Grant Agreement with Amtrak for the completion of the NECIP. All told over $290 million remains to be outlayed from the $2,217.6 million NECIP appropriation.

BOSTON SOUTH STATION PROJECT

Mr. CONTE. Could you give me an update on the Boston South Station project, particularly with regard to current versus budgeted costs and schedule?

[The information follows:]

The Boston South Station project is approximately 12 months behind schedule and experiencing cost overruns that can, at this time, only be estimated. Any time major reconstruction is done on an 87 year old station there will be unanticipated problems, such as structural elements needing replacement, that could not be properly inspected and identified until the structure itself is opened up during construction. These types of problems are occurring at South Station and FRA and MBTA are attempting to limit cost increases associated with such problems.

SOUTHERN MICHIGAN RAIL FREIGHT COMPETITION

Mr. PURSELL. My main concern is what the impact of the acquisition of Conrail by Norfolk Southern will be on the Ann Arbor Railroad.

The Ann Arbor Railroad is a small, but important railroad in my district that is emerging from bankruptcy. The Trustee of the Ann Arbor Railroad has informed me that under the latest divestiture plan, the railroad could be greatly weakened. As a way of restoring some competitive balance in the area, the Ann Arbor Railroad has proposed that it be granted trackage rights between Ann Arbor and Detroit.

In this way, a neutral carrier would be able to offer competing service, connecting to Grand Trunk Western, Norfolk Southern, and CSX, and provide shippers with alternatives to the existing system.

Would the FRA support such a solution to the competitive problem in Southern Michigan?

[The information follows:]

While the Ann Arbor Railroad System, which is operated by the Michigan Interstate Railway, has contended that all of its traffic would be susceptible to diversion by a Norfolk Southern-Conrail system, the Interstate Commerce Commission (ICC) staff (which was detailed to Congressman Florio's Subcommittee) in its report to Congress dated August 6, 1985, concluded that the revenue loss to the Ann Arbor by reason of such a merger would be very small. The ICC reached this conclusion because the majority of the traffic of the Ann Arbor originates at points served exclusively by them, and because this traffic is currently subject to diversion by intermodal movement. For the same reason, the entry of Guilford will not harm the Ann Arbor, but instead will give them one additional carrier with whom to interchange traffic.

The Ann Arbor's request for trackage rights from Ann Arbor to Detroit, MI, would not significantly add to the competitive situation in southeastern Michigan. The Department of Justice has concluded that allowing Guilford access to Detroit and interchange with the Ann Arbor at Milan, MI, and Toledo, OH, would resolve any competitive issues that would arise in this area as a result of the merger of NS-CR.

Mr. PURSELL. Under the current divestiture proposal, can the Guilford railroad reach the auto plants between Ann Arbor and Detroit independently of a combined Norfolk Southern/Conrail?

[The information follows:]

Under the current divestiture proposal, Guilford is not able to serve directly the auto plants between Ann Arbor and Detroit, MI. Based on its traffic analysis, the Department of Justice has concluded that giving Guilford access to both automobile and TOFC loading facilities at Detroit is sufficient to alleviate any competitive problems along that line, which is now served only by Conrail.

MICHIGAN DOT POSITION ON CONRAIL

Mr. PURSELL. It is my understanding that the Michigan Department of Transportation has spent a great deal of time studying this sale, and that they feel as currently proposed it will have a negative impact on the state.

What evidence can you give me that the Michigan DOT is wrong in their analysis?

[The information follows:]

The U.S. Department of Transportation has not received any information that details the results of the study done by the Michigan Department of Transportation. However, the Department of Justice (DOJ) concluded in its review of the rail competitive situation in Michigan that the NS–CR merger would necessitate a competing east-west carrier at Detroit. NS in its divestiture agreement extended trackage rights to Guilford which will enable Guilford to effectively serve Detroit and southeastern Michigan. This will provide Wayne and Washtenaw counties, which were identified as problem competitive areas by DOJ, with the same competitive service level that now exists. Based on our evaluation of the traffic involved and the consequences of the conditions being imposed by DOJ, we believe that the NS–CR merger will not adversely offset shippers in the State of Michigan.

GUILFORD STRIKE

Mr. PURSELL. Guilford Transportation is made up of three component railroads—the Maine Central, the Boston & Maine, and the Delaware & Hudson.

It is my understanding that there is a strike at the Maine Central and that it may spread to the other two railroads. It is also my understanding that officers of Guilford have told various elected officials that if the union goes on strike at the Delaware & Hudson, it will never re-open.

If this is true, and if the Delaware and Hudson is closed down, does the FRA have any contingency plans for the divestiture?

[The information follows:]

At this writing, strike of the Guilford railroads has extended to picketing of all major locations of the Maine Central and Boston and Maine, and to the Delaware and Hudson's (D&H's) Colonie Yard in Albany, New York. When contacted as to the factualness of the statement that the D&H would never re-open if the union went on strike, Guilford representatives have denied making such a statement.

USE OF CONRAIL SALE FUNDS

Mr. PURSELL. A number of my colleagues who deal with transportation issues have suggested that a portion of the proceeds from the Conrail sale be used to fund rehabilitation for small to medium sized railroads that are still trying to rationalize and restructure their systems.

Would you support such a move?

[The information follows:]

The Department is clearly opposed to setting up a fund with the proceeds for the Conrail sale for use in rehabilitating small- to medium-sized railroads. It is our feeling that such a fund is not necessary considering the generally positive financial conditions of the nation's rail system. We believe that the funds from the Conrail sale should be earmarked for the general fund to reduce the deficit. This is justificable because the money spent to rehabilitate Conrail came from the general fund, thus the proceeds from the sale should be returned to the fund.

JUSTIFICATIONS

AUTHORIZING LEGISLATION

Mr. COUGHLIN. Turning now to Justifications. What programs in your fiscal year 1987 budget request require authorizing legislation and what is the status of such legislation?

Mr. RILEY. The one that we would like to see authorizing legislation on is the Railroad Safety Act. Let me add, however, that in the event that authorizing legislation were not forthcoming on the Railroad Safety Act, our safety authority is embodied on permanent legislation, and we can run that on a continuing resolution.

It would be my hope, however, that we could get reauthorization, largely because I would like to end the somewhat divisive debate over that.

LRSA/SECTION 511 AUTHORIZATION STATUS

Mr. COUGHLIN. Please provide for the record a status report of authorizations for the LRSA and section 511 programs.

[The information follows:]

The LRSA program authority has no statutory expiration date but must receive appropriations each year. LRSA received an appropriation of $15 million for FY 1986. Gramm-Rudman-Hollings sequestered $645,000 leaving a balance of $14,355,000, which is proposed for rescission. (The deadline for Congress to act on the rescissions is estimated to be April 15).

The section 511 program has no statutory expiration date. Obligation authority of $4.0 million was made to section 511 for FY 1986. Gramm-Rudman-Hollings sequestered $172,000 leaving a balance of $3,828,000, which will remain available until the end of FY 1986.

OVERSEAS TRAVEL

Mr. COUGHLIN. Please update for the record the breakdown of overseas travel by FRA employees found on page 180 of last year's hearing record starting on the date ending last year's submission.

[The information follows:]

OVERSEAS TRAVEL

MARCH 10, 1985 - MARCH 10, 1986

APPROPRIATION AND DESTINATION	PURPOSE	DATES	COST
R&D - LONDON, CANADA	TO INSPECT, AS A MEMBER OF THE LOCOMOTIVE CONTROL COMPARTMENT COMMITTEE, A NEW DIESEL - ELECTRIC LOCOMOTIVE	APRIL 9-10, 1985	$306
OA - OTTAWA, CANADA	ATTEND 1985 US/CANADIAN COOPERATIVE REVIEW MEETING	APRIL 24-25, 1985	420
OA - MONTREAL, CANADA	TO MEET WITH THE RESPECTIVE PRESIDENTS OF CANADIAN NATIONAL RAILWAYS AND GRAND TRUNK WESTERN RAILROAD COMPANY TO DISCUSS CONRAIL	JUNE 10-12, 1985	646
OA - WHISTLER, CANADA	TO ADDRESS THE COUNCIL FOR FOREST INDUSTRIES OF BRITISH COLUMBIA SECOND ANNUAL CONFERENCE	JUNE 13-15, 1985	947
OA - MONTREAL, CANADA	TO ADDRESS THE RAILROAD PERSONNEL ASSOCIATION (RPA) 33RD ANNUAL CONFERENCE	SEPTEMBER 10-11, 1985	584

MERGER OF BUDGET ACCOUNTS

Mr. **Coughlin**. On page 1, you discuss your proposal to merge the Rail Service Assistance account into the Office of the Administrator account, and the Research and Development account into the Rail Safety account.

Would you explain the rationale for this request?

Mr. **Riley** Yes. The merger of Railroad Research and Development and Railroad Safety is a substantive decision. We made a decision that in the era of shrinking Federal dollars that we could no longer afford to spend Federal research dollars on areas where the industry has a cost incentive to invest, that we were going to focus our dollars on pure safety research, on areas where there is no cost benefit to the industry in investing.

The reason that I merged Research and Development with Safety is to make sure that there was coordination between those two offices. I did not want to have a situation—and in fact we were evolving toward one—in which Research and Development had one set of priorities, and Safety had another.

The purpose of merging those two offices—and we have merged them in fact as well as in an accounting sense—was to insure coordination of policy between the safety arms of the agency.

As to the Office of Federal Assistance, that is really more a title change. The recommendations we've made on funding of the various Federal assistance progams imply a shrinking responsibility for that area of the agency. What they will be doing is more policy oriented, and their relationship to the Office of the Administrator was more akin to the Office of Policy which is why we included them under that umbrella.

RAIL SAFETY SEQUESTRATION

Mr. **Coughlin**. Turning to Gramm-Rudman cuts, on page 2 you propose taking the full $1.194 million reduction required in the Rail Safety Program by the March 1st Gramm-Rudman reduction from one account—the state safety grant program. This fully protects federal inspectors from any reductions. Why do you propose taking the full reduction from state grants? And what effect will this have on the number of state inspectors who are in the field?

Mr. **Riley**. I did it because faced with the need to make a cut in safety dollars, I decided to make that cut in the area where it would have the least impact on safety enforcement. I think you've got to recognize that in my judgment it is essential to preserve the Federal Inspection Force.

State inspectors are not as mobile as federal inspectors because they work within the jurisdictional boundaries of a given state.

Much of the inspection work that we do today is interregional, because the mergers that created the six major regional railroads forced us to do assessments region-wide. Federal inspectors are more mobile; there is a broader range of disciplines in which they are authorized to do inspections, and the state inspectors are less accountable to FRA management.

When an FRA inspector, a Federal inspector, is cut, he's gone. We believe, however, that the State inspectors would be largely retained. I think most of them would be retained, even without the Federal investment.

We are asking the States to shoulder an average of around $100,000 each in this program, and that is not an exceptional amount of money.

I really believe that if any of the States believe that the benefit of this is so small as to not merit $100,000, they're telling us something about the program. And I also have believed for a long while that since most of these State inspectors would in fact continue to serve even in the absence of Federal subsidy, the cost-benefit for those few that we would impact is very, very negative.

REDUCTION IN STATE INSPECTORS

Mr. COUGHLIN. Could you provide us an estimate of the number of state inspectors that would likely be reduced?

Mr. RILEY. Yes. And I'll just say for the record that we estimate in a very subjective and unscientific way that at least 70 of the 104 inspectors would remain on board.

POST-SEQUESTRATION STATE GRANT OBLIGATIONS

Mr. COUGHLIN. How much will be obligated for State grants in fiscal year 1986 under your proposal?

Mr. RILEY. I'm going to have to look at the numbers on that. I don't have that one in front of me.

Mr. COUGHLIN. Would you supply that for the record?

Mr. RILEY. I'll have to supply that for the record.

[The information follows:]

If Congress approves FRA's suggested Gramm-Rudman cuts, $1,060,191 will be available to the States. At this funding level, FRA will be able to fund about 16.5 percent of the total program costs.

RAIL SAFETY REPROGRAMMING

Mr. COUGHLIN. Do you know what would be the effect if we were to turn down your reprogramming request?

Mr. RILEY. The effect would be that I would have to take the Gramm-Rudman dollars out of another area. And I really believe that to assess that cut in any other area of safety enforcement would have a negative net impact on safety. How serious is hard to judge. But it would be a negative net impact.

Mr. COUGHLIN. Would you have other expenses you could cut rather than cutting people?

Mr. RILEY. Well, I would do everything I could to cut every other expense before I would cut people, and I would cut clerical before I would cut inspectors. But it seems to me that this is not a program we've advocated funding in the past. It's a program that I have never felt had good cost-benefit. I recognize it's one that the States like very much, but I think you really have to recognize that you are shifting a cost of $100,000 or so back to the States in each case. And that is not an exceptional amount of money, and yet it enables us not to have to assess that cost across the full breadth of our safety program.

Mr. COUGHLIN. Would you have to let some people go if we turned down the reprogramming request?

Mr. RILEY. I can't say that with certainty, because I do not know the answer. Before just answering that off the top of my head, I would like to go back and look hard at my numbers, and then answer that question for you.

I'm not seeking to defer the answer, but I am seeking to really take a hard look to make sure that what I think I have to tell you, which is "yes" is in fact the case. I want to be sure I'm right before I say that.

Mr. COUGHLIN. Provide that for the record please.

Mr. RILEY. Yes.

[The information follows:]

RAIL SAFETY REPROGRAMMING OPTIONS

A reduction to accommodate the Gramm-Rudman cuts in any area of the Railroad Safety Appropriation other than the Grants-in-Aid for Railroad Safety program would prove highly detrimental to FRA's safety effort. An FY 1986 program level of $2,189,000 for the Grants-in-Aid program would allow Federal funding for approximately 34 percent of the total program costs. The possible "options" in order of FRA's preference are briefly discussed below.

Option 1. Take the full $1,194,000 cut in Safety out of the $1.5 million in State Grants.

This remains FRA's preferred option. Since we have determined that the States would continue to fund the vast majority of the 104 State inspectors now onboard, this cut would in no way be detrimental. The $1,060,000 remaining in the program could be used to fund approximately 17 percent of the States' overall program costs.

Option 2. Reprogram R&D funds.

Railroad research and development is an integral part of FRA's safety effort. Funding for this program has been significantly reduced in recent years and is now focused excusively on safety research items that FRA feels the private sector would not undertake on its own. However, FRA is prioritizing proposed research projects as a second option if the Agency is not permitted to take sufficient funding from the Grants-in-Aid program to accommodate the Gramm-Rudman reduction. In order to reduce R&D funds, language would have to be put in the Committee report to allow FRA to take the Safety cut from R&D.

Option 3. Eliminate ATIP and reduce Grants-in-Aid funding.

The $1.2 million FY 1987 program level for ATIP includes $1.0 million from FY 1986 unobligated carryover. This $1.0 million could be applied to the Gramm-Rudman cut. The remaining $194,000 savings necessary under Gramm-Rudman could be achieved by reducing the Federal share under the State Participation program to approximately 32 percent. Elimination of ATIP would have a serious deleterious effect on FRA's ability to monitor railroad compliance with the Federal Track Safety Standards. If the ATIP program is not curtailed, the geometry vehicle will provide FRA with over 25,000 miles of automated track inspection data in FY 1986.

Option 4. Reduce travel funds for the safety field inspector force.

Congress has recognized the importance of allowing for sufficient travel funds in the Safety Appropriation. In accordance with Congressional requirements contained in the FY 1986 Appropriation bill, there is $2.86 million in the Safety Appropriation in FY 1986 for travel, primarily to permit each FRA inspector to travel 15 days per month. Even if FRA limited inspector travel to 10 days a month for the last 4 months of the fiscal year, the net savings would only be approximately $300,000. Such a travel restriction would result in a very ineffective utilization of inspector resources and an estimated $900,000 would still have to come from the Grants-in-Aid program and/or other sources.

Option 5. Furloughs.

There is $19,353,000 in personnel compensation and benefits in the Office of Safety's operating budget for FY 1986. Projections of personnel compensation and other administrative costs for Railroad Safety shows less than $200,000 savings as a result of attrition and other administrative savings for field and headquarters personnel. In order to effect the balance of the cut, a furlough program reducing the average work week for all Office of Safety personnel to 32 hours beginning in May 1986 would have to be implemented to achieve the necessary Gramm-Rudman savings. A furlough would have serious deleterious effects on the railroad safety program. In addition to the 20 percent reduction in inspections for over 4 months of the year and a delay in the regulatory review program, etc., a furlough would undoubtedly make retention of the existing field force and recruitment of replacements highly unlikely.

Option 6. Take an across-the-board 4.3 percent reduction in the Railroad Safety Appropriation.

[In thousands of dollars]

	Enacted FY 1986 appropriations	Required sequestered amounts
Railroad Safety	27,764	1,194
Federal Enforcement	22,564	970
ATIP	[1]100	4
Headquarters	3,600	155
Grants-in-Aid	[2]1,500	65

[1] Plus $1.1 million carryover.
[2] Plus $754,000 carryover.

To absorb a $970,000 reduction in FY 1986 in the Federal Enforcement program not using furloughs would result in the elimination of most of the Federal inspection force. Even if a decision was made in the near future, the required lead time to inform employees in accordance with Federal personnel regulations would mean that layoffs could not be effectuated until the fourth quarter of the fiscal year. The first year savings (FY 1986) accruing from the layoffs would be largely offset by required serverance payments and payoffs of accrued annual leave. Based on computations of salary savings versus serverance and accrued annual leave payments, it is conservatively anticipated that at least three-fourths of the field staff, a total of 304 positions, would have to be terminated.

Savings on the order of $155,000 could be achieved in the contractual portion of the Office of Safety Headquarters budget by deferring work on the Risk Assessment and Control Program (RACP). In our judgment, such a deferral would be a serious error from a safety planning perspective. No other FY 1986 contractual funds are available within the Safety Appropriation.

The program level of $2,189,000 for the Grants-in-Aid program would allow Federal funding for approximately 34 percent of the total program costs.

OFFICE SPACE

Mr. Coughlin. Last year, information was provided for the record showing your headquarters office space use rate at 186 square feet per employee in fiscal year 1986.

That seems somewhat higher than other DOT agencies. Why is your office space so high and when will you reach the GSA standard of 135 square feet per employee?

[The information follows:]

Two factors contributed to our unexpectedly high space utilization rate:

1. The rate last year did not exclude supplemental space. Current GSA rules allow agencies to exclude supplemental space (common space, computer rooms, conference rooms, etc.) when calculating utilization rates. When this adjustment is made for FY 1986, the space utilization rate is 177 versus 186 square feet per person as reported last year.
2. The FRA staffing levels diminished at a faster rate than space because there is always a lag time between departure of personnel and release of space. Also, the staff reductions we have experienced over the past two years have led to unavoidable inefficiencies in the utilization of space.

GSA had mandated that space utilization be reduced to 135 square feet per employe by FY 1990. FRA is planning to meet that deadline.

STANDARD LEVEL USER CHARGES SLUC

Mr. Coughlin. Please update the SLUC table found on page 182 of last year's hearing record by adding a fiscal year 1987 column.

[The information follows:]

FRA OFFICE SPACE

	HEADQUARTERS						FIELD				
	ALL SPACE	PERSONNEL ASSIGNED 1/	UTILIZATION RATE	SLUC CHARGE 2/	AVERAGE SLUC PER SQ. FOOT		ALL SPACE	PERSONNEL ASSIGNED	UTILIZATION RATE	SLUC CHARGE	AVERAGE SLUC PER SQ. FOOT
1984	82,605	346	239	$1,373,713	$16.63	1984	72,831	356	205	$838,287	$11.51
1985	62,341	335	186	$1,075,850	$17.26	1985	68,648	389	176	$842,997	$12.28
1986	57,974	312	186	$1,075,997	$18.56	1986	64,786	394	164	$803,994	$12.41
1987	56,941	304	165 3/	$1,309,073	$22.99	1987	62,321	399	140 4/	$775,895	$12.44

1/ Personnel assigned for space utilization purposes include; contractor personnel: full-time and other than full-time personnel, Japanese National Railroad personal, consultants and FHWA personnel assigned to assist with the Northeast Corridor Improvement Project.

2/ SLUC charges shown are for all space including supplemental space.

3/ Projected utilization rate does not include 6,900 square feet of allowable supplemental space.

4/ Projected utilization rate does not include 6,520 square feet of allowable supplemental space.

206 a

SES BONUS AWARDS

Mr. **Coughlin**. Please also update for the record the SES bonus award table found on page 184 of last year's hearing record.

[The information follows:]

SES BONUS AWARDS

Appropriation/Office	Fiscal Year 1984		1985		1986		1987	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Office of the Administrator.	1	$ 5,900	1	$ 4,025	1	$ 4,020	*	*
Railroad Safety.	1	$ 4,000	1	$ 6,075	1	$ 4,020	*	*
Rail Service Assistance.	...	...	...	...	1	$ 6,140	*	*
Northeast Corridor Improvement Program	1	$ 5,900	1	$ 6,075	...	...	*	*
TOTAL.	3	$15,800	3	$16,175	3	$14,180	*	*

The estimate for fiscal year 1987 would be the same as in fiscal year 1986, i.e., 3 persons receiving bonuses of approximately the same amount as in fiscal year 1986, but not necessarily the same offices.

FRA EMPLOYEE RECEIVING MORE THAN ONE SES BONUS AWARD

	1982	1983	1984	1985	1986
Executive Director, William E. Loftus	$5,500	$10,480	$5,900	$4,025	$4,020
Associate Administrator for Passenger and Freight Services, Louis S. Thompson			$5,900	$6,075	$6,140
Associate Administrator for Safety, Joseph W. Walsh			$4,000	$6,075	$4,020

* Not determined at this time.

WORKING CAPITAL FUND

Mr. COUGHLIN. Please also update for the record the working capital fund table found on page 185 of last year's hearing record by adding a fiscal year 1987 column.

[The information follows:]

WORKING CAPITAL FUND

Below is a breakdown of the $1.517 million fiscal year 1987 estimate for the Working Capital Fund and a comparison to fiscal year 1986.

[In thousands of dollars]

Services provided	FY 1986	FY 1987	Difference
Printing	$214.6	$200.3	−14.3
Photo	23.7	27.3	3.6
Graphics	24.3	24.9	.6
Transp. Computer Center	126.9	139.6	12.7
Computer Timesharing	305.6	305.6	0
Library	129.4	143.8	14.4
Travel/Imprest/Passport	1.5	1.5	0
Central Employment Info. Office	3.7	3.8	.1
Warehouse	9.4	9.7	.3
Transp. (Chauffeur & Shuttle Bus)	13.1	14.2	1.1
Parking Management	3.6	3.4	−.2
Mail and Messenger	9.4	10.0	.6
Facilities/Bldg. Management	267.0	369.3	102.3
Health Fitness Center	20.3	26.2	5.9
Security	172.7	237.5	64.8
Total	1,325.2	1,517.1	191.9

Mr. COUGHLIN Please explain the 54 percent increase in Working Capital Fund mail and messenger costs, the 56 percent increase in WCF library costs, the 54 percent increase in WCF facilities management costs, and the 56 percent increase in WCF transportation costs between fiscal year 1985 and 1986 as reported on page 183 of last year's hearing record.

[The information follows:]

The initial FY 1986 Working Capital Fund estimates were provided by the Office of the Secretary. OST has recently revised these estimates. A comparison between the FY 1985 obligations and the revised FY 1986 estimates are shown below:

[In thousands of dollars]

Services provided	Obligations FY 1985	Revised FY 1986	Difference
Printing	$210.0	$214.6	4.6
Photo	13.0	23.7	10.7
Graphics	24.0	24.3	.3
Transp. Computer Center	370.0	126.9	−243.1
Computer Timesharing	658.0	305.6	−352.4
Library	136.0	129.4	−6.6
Travel/Imprest/Passport	3.0	1.5	−1.5
Central Employment Info. Office	2.0	3.7	1.7
Warehouse	12.0	9.4	−2.6
Transp. (Chauffeur & Shuttle Bus)	5.0	13.1	8.1
Parking Management	6.0	3.6	−2.4
Mail and Messenger	26.0	9.4	−16.6

[In thousands of dollars]

Services provided	Obligations FY 1985	Revised FY 1986	Difference
Facilities/Bldg. Management	157.0	267.0	110.0
Health Fitness Center	21.0	20.3	-.7
Security	102.0	172.7	70.7
Total	1,745.0	1,325.2	-419.8

POLITICAL APPOINTEES

Mr. COUGHLIN. Please also update for the record the political appointees tables found on pages 186 through 188 of last year's hearing record.

[The information follows:]

POLITICAL APPOINTEES

Fiscal Year 1981

Title	Type of Appointment	Salary
Administrator	Presidential	$55,387
Deputy Administrator	Non-Career SES	50,112
Special Assistant to Admin.	Schedule C	50,112
Special Assistant	Temporary Schedule C	44,547
Executive Assistant	Schedule C	44,547
Public Affairs Officer	Schedule C	49,002
Chief Counsel	Non-Career SES	50,112

Fiscal Year 1982

Title	Type of Appointment	Salary
Administrator	Presidential	$59,500
Attorney-Advisor	Non-Career SES (Limited)	54,755
Deputy Administrator	Non-Career SES	58,500
Special Assistant to Admin.	Schedule C	39,689
Special Assistant to Admin.	Schedule C	47,442
Chief Counsel	Non-Career SES	58,500
Associate Administrator for Policy	Non-Career SES	58,500

Fiscal Year 1983

Title	Type of Appointment	Salary
Special Assistant	Non-Career SES	$63,800
Deputy Administrator	Non-Career SES	65,500
Special Assistant	Schedule C	34,930
Secretary	Schedule C	20,256
Program Coordinator	Schedule C	20,256
Chief Counsel	Non-Career SES	65,500
Attorney-Advisor	Non-Career SES (Limited)	56,945
Associate Administrator for Policy	Non-Career SES	63,800

Fiscal Year 1984

Title	Type of Appointment	Salary
Administrator	Presidential	$71,100
Special Assistant	Non-Career SES	66,400
Deputy Administrator	Non-Career SES	68,150
Intergovernmental Affairs Coord.	Schedule C	36,327
Secretary	Schedule C	21,768
Program Coordinator	Schedule C	21,768
Supervisory Public Affairs Spec.	Schedule C	30,549
Staff Assistant	Schedule C	21,066
Chief Counsel	Non-Career SES	68,150
Associate Administrator for Policy	Non-Career SES	66,400

210b

Fiscal Year 1985

Title	Type of Appointment	Salary
Administrator	Presidential	$73,600
Deputy Administrator	Non-Career SES	70,500
Special Assistant to the Admin.	Non-Career SES	68,700
Chief Counsel	Non-Career SES	70,500
Intergovernmental Affairs Coord.	Schedule C	37,599
Supervisory Public Affairs Spec.	Schedule C	32,673
Program Coordinator	Schedule C	26,381
Staff Assistant	Schedule C	22,531
Secretary (Typing)	Schedule C	22,531

Fiscal Year 1986

Title	Type of Appointment	Salary
Administrator	Presidential	$73,600
Deputy Administrator	Non-Career SES	70,500
Special Assistant to the Admin.	Non-Career SES	68,700
Chief Counsel	Non-Career SES	70,500
Intergovernmental Affairs Coord.	Schedule C	38,852
Supervisory Public Affairs Spec.	Schedule C	38,852
Staff Assistant	Schedule C	26,381
Secretary (Typing)	Schedule C	24,811

COMPUTER OPERATIONS CONSOLIDATION

Mr. COUGHLIN. Several years ago, the Grace Commission was highly critical of the FRA's computer operations, recommending that you consolidate them with the computer operations of the Office of the Secretary.

Last year we were told that the A-76 study process on this item was not yet completed. What did you finally decide? Will this be consolidated with OST or not, and why?

Mr. RILEY Yes. A consolidation has in fact been made. It was analyzed on a Department-wide basis. All of the modes' relative advantages and disadvantages were weighed. Contracting out was the option selected.

We have replaced two employees with private contractors, and the savings that were achieved by that were reflected in the current fiscal year. If Ray Rogers is behind me I can get you a number on it.

Mr. ROGERS. We saved approximately $20,000 in the effort, and that was spread over a two year contract, about ten thousand last year and about ten thousand this year.

Mr. COUGHLIN. Please provide for the record a summary of the findings and conclusions of your A-76 computer study.

[The information follows:]

A-76 REVIEW—ADP SERVICES

The findings of the FRA study were provided to the Assistant Secretary for Administration, OST, whose office consolidated all of the operating administrations' requirements and determined it would be more cost effective to contract with the private sector for ADP services. FRA had two positions converted to private sector contractor employees.

The contractor, Micro Computer Systems Inc., began FRA operations on October 1, 1985. The savings will be approximately $20,440 during fiscal years 1986 and 1987. (Total costs for FRA to do the work in-house would be $164,440 compared to FRA's $144,000 share of the Department's contract.)

OFFICE OF THE ADMINISTRATOR STAFFING

Mr. COUGHLIN. Please provide for the record a breakdown of positions, full-time equivalents and dollars (broken out by PC&B and other costs) for each office proposed to be funded under the Office of the Administrator account in fiscal year 1987.

Please also compare these figures with comparable figures for fiscal years 1985 and 1986.

[The information follows:]

OFFICE OF THE ADMINISTRATOR

SALARIES AND EXPENSES BREAKDOWN

	FY 1985 Actual					FY 1986 Estimate					FY 1987 Estimate				
			(Dollars $000)					(Dollars $000)					(Dollars $000)		
	Positions	FTEs	PC&B	Other	Total	Positions	FTEs	PC&B	Other	Total	Positions	FTEs	PC&B	Other	Total
Office of the Administrator	120	123	$5,525	$1,365	$6,890	113	129	$5,572	$1,027	$6,599	113	104	$5,418	$869	$6,287
Policy	52	52	2,332	583	2,915	51	58	2,380	480	2,860	51	49	2,542	430	2,972
Policy	(48)	(48)	(2,157)	(533)	(2,690)	(48)	(55)	(2,245)	(440)	(2,685)	(48)	(46)	(2,407)	(390)	(2,797)
Labor Mgt 1/	(4)	(4)	(175)	(50)	(225)	(3)	(3)	(135)	(40)	(175)	(3)	(3)	(135)	(40)	(175)
Executive Director 1/	5	4	217	53	270	4	4	217	53	270	4	4	217	53	270
Passenger & Freight Services 1/	35	30	1,354	498	1,852	36	39	1,429	353	1,782	28	30	1,274	230	1,504
Total	212	209	$9,428	$2,499	$11,927	204	230	$9,598	$1,913	$11,511	196	187	$9,451	$1,582	$11,033

1/ Previously funded under the Rail Service Assistance appropriation. FY 1985 excludes Northeast Corridor personnel which were financed under a separate appropriation.

212a

CHIEF COUNSEL POSITIONS

Mr. COUGHLIN. Please also provide for the record a breakdown of Office of Chief Counsel positions showing the salary and job title for each position currently on board.

[The information follows:]

Office of Chief Counsel

Title	*Salary*
Chief Counsel	$70,500
Deputy Chief Counsel	63,174
Supervisory Attorney-Adviser (Transportation)	67,311
Supervisory Attorney-Adviser (Transportation)	63,883
Supervisory Trial Attorney (Transportation)	60,358
Supervisory Attorney-Adviser (Transportation)	57,752
Supervisory Trial Attorney (Transportation)	55,746
Attorney-Adviser (Transportation)	66,992
Attorney-Adviser	61,487
Trial Attorney (Transportation)	51,835
Trial Attorney (Transportation)	51,835
Trial Attorney (Transportation)	50,354
Trial Attorney	50,354
Attorney-Adviser (Transportation)	48,873
Attorney-Adviser (Transportation)	47,392
Attorney-Adviser (Contract)	45,911
Attorney-Adviser (Contract)	44,430
Attorney-Adviser	42,611
Attorney-Adviser	37,599
Trial Attorney	31,619
Trial Attorney	31,619
Enforcement Information Technician	21,388
Paralegal Specialist [1]	17,824
Paralegal Specialist [1]	17,824
Paralegal Specialist [1]	14,390
Secretary (Stenography)	26,893
Secretary (Stenography)	23,688
Secretary (Stenography)	22,372
Secretary (Stenography)	22,372
Secretary (Stenography)	21,388
Secretary (Stenography)	20,794

[1] Part-Time Employee.

ADMINISTRATOR'S STAFF

Mr. COUGHLIN. Please provide a similar breakdown for the immediate office of the administrator.

[The information follows:]

Immediate Office of the Administrator

Title	*Salary*
Administrator	$73,600
Deputy Administrator	70,500
Special Assistant to the Administrator	49,160
Intergovernmental Affairs Coordinator	38,852
Program Analyst	41,358
Executive Correspondence Specialist	32,534
Secretariat Staff Specialist	25,439
Correspondence Review Specialist	19,012
Secretary (Typing)	24,811
Secretary (Stenography)	31,211
Secretary (Typing)	20,200
Clerk-Typist	10,501
Chauffeur (per hour)	10.07

Office of the Secretary Positions

Special Assistant to the Administrator	68,700
Staff Assistant	29,611

REDUCTION IN FORCE

Mr. COUGHLIN. On page 11, would you explain the large increase in the "benefits for former personnel" account—from $11,000 to $255,000?

[The information follows:]

In order to meet the full-time equivalent employment level the FY 1987 budget imposes, it is anticipated that some personnel may be released from Federal employment. The severance pay and unemployment compensation cost, if such a reduction takes place, are reflected in this object class. The severance pay calculation is based on each individual action and is based on salary, years of Federal employment and the employee's age. The unemployment calculation cannot be accurately determined at this time as it is affected by several factors including how quickly the employee finds a job and in which jurisdiction the employee applies for benefits.

TRAVEL FUNDING

Mr. COUGHLIN. On page 11 would you explain the reason for the 25 percent decrease in travel funding—from $153,000 to $113,000?

Were we too generous in fiscal year 1986?

Mr. RILEY. No. The decrease in travel funding reflects the recommendation that all funding for Amtrak be discontinued, and that all of the Federal assistance funding be discontinued. It also reflects an inflationary factor.

But the major reason for the decrease in travel funding is the assumption that two of the major program areas which required some travel last year would not continue to be funded.

In addition, we have frankly been very tight in authorizing our travel. We tried to put our travel money into safety as much as possible. And we have been fairly tight in authorizing travel in other areas.

PART-TIME EMPLOYMENT

Mr. COUGHLIN. Also on page 11, why do you show a 45 percent increase in other than full time employment from $279,000 to $405,000?

Mr. RILEY. The reason for that is we have to take about a 43 FTE reduction going into the next year, and we believe that to make the transition from where we are now to where we will be after that reduction we are going to need to utilize the flexibility of other than full time employees. That's the purpose.

OTHER PERSONNEL COMPENSATION

Mr. COUGHLIN. Please provide for the record a breakdown of fiscal years 1985, 1986, and 1987 "other personnel compensation" costs, for the Office of the Administrator.

[The information follows:]

Other personnel compensation for Office of the Administrator is composed of: overtime; holiday pay; special achievement and employee suggestion awards and merit pay cash awards. The following table breaks out by these categories 1985 actual and 1986 and 1987 estimated obligations.

[In thousands of dollars]

Category	Other personnel compensation		
	1985	1986	1987
Overtime	$99	$90	$90
Holiday pay	2	2	2
Special achievement & employee suggestion awards	54	33	33
Merit pay	10	10	10
Total	$165	$135	$135

COMMUNICATIONS, UTILITIES AND OTHER RENT

Mr. COUGHLIN. Please also update for the record the Office of the Administrator communications cost table found on page 192 of last year's hearing record by adding a fiscal year 1987 column.

[The information follows:]

COMMUNICATIONS, UTILITIES AND OTHER RENT

[In thousands of dollars]

Description	Object class	1985 actual	1986 estimate	1987 estimate
Rental of Office Space	2302	$709	$887	$849
Utilities	2310	0	1	2
Federal Telecommunications System	2320	142	119	59
Local Telephone and Switch Board Services	2321	181	180	171
Telegraph, other Wire and Wireless Services	2323	1	2	2
Penalty Mail	2324	45	41	42
Other Communication Services	2325	1	1	1
Rental of Word Processing Equipment	2330	20	19	10
Rental of ADP Equipment	2332	4	0	0
Total		1,103	1,250	1,136

Mr. COUGHLIN. On page 20, why do you require an 80 percent increase in Office of the Administrator contractual support—from $653,000 to $1,180,000?

Mr. RILEY. Actually, that is somewhat misleading. I am informed that the $653,000 figure reflects the FY 1986 appropriation of $1,088,000 less $435,000 Gramm-Rudman-Hollings cut which we proposed in our narrative justification to be taken from this line item. We will reduce certain contract support in FY 1986 to absorb this cut.

We are also assuming that going into next year we will need to enhance our contractual support on Staggers analysis. Because I think that will be a bigger issue as we get into the next Congress. And on Amtrak.

The interplay of Amtrak's budgetary needs and the Gramm-Rudman ceilings are likely to require us to do some hard analytical work on Amtrak.

I've always said, and we'll explore this more tomorrow, that we would work with those who would like to pick up pieces of the Amtrak system, and this reflects the expectation that we would have to do some of that.

10 LARGEST CONTRACTS

Mr. COUGHLIN Please provide for the record a listing of the 10 largest contracts obligated under the Office of the Administrator in fiscal year 1985 showing the contractor, the amount, purpose of the contract, and whether or not it was competitively bid?

[The information follows:]

220a

The following are the 10 largest contracts obligated under the Office of the Administrator in fiscal year 1985:

Contractor	Purpose	Competitive Sole Source	Dollars
Goldman Sachs	Investment Banking Services related to Conrail sale	OST sole source contract	$1,223,500
Litton Industries	Timesharing Services Network Model	Competitive through GSA	250,000
Boeing Computer	Timesharing Services Waybill Model	Competitive through GSA	200,000
Data Resources Inc.	Timesharing Services Economic Models	Sole Source	125,000
Robert L. Banks	Evaluate financial viability of projects under Title 5, sections 505 and 511 of the 4R Act	Competitive	97,500
University of Illinois	To continue interregional grain flow study in 13 states	Sole Source	50,000
Harrison-Boyd	To examine impact of geographic competition in railroading pricing of coal bound for export	Minority	33,140

220b

Contractor	Purpose	Competitive Sole Source	Dollars
Peat Marwick Mitchell	To continue to maintain support for FRA automated accounting system	Competitive	$ 25,000
Neil Moyer	Financial Analysis Support for Title V applications	Sole Source	24,900
Analytic Systems Group	To develop, test, and install software to enhance Rail Financial Data Base	Sole Source	24,895

LABOR/MANAGEMENT PROJECTS

Mr. COUGHLIN. Last year the Committee earmarked $1.4 million to continue contractual support for labor/management cooperative projects.

A major aim of these projects is to provide alcohol and drug counseling to railroad employees. How effective have these programs been? And why haven't you requested additional funding for this activity for fiscal year 1987?

[The information follows:]

Labor-management funds have been used to promote voluntary prevention programs in two ways. First, we have included alcohol and drug prevention tasks as a part of individual labor-management projects that have received FRA financial assistance. Second, we have used these funds to sponsor certain activities of the national labor-management-government committee on voluntary programs. In both instances, the programs have been effective in encouraging labor and management on individual properties to enhance their prevention programs and in some cases adopt "Operation: Red Block." For example, the commuter railroad in Chicago, METRA, which has received assistance from FRA for its labor-management cooperative project, used the project to study and make recommendations on alcohol and drug issues. As a result, METRA became the first commuter railroad to adopt "Operation: Red Block". The experience in New England was similar. Acting through the New England Labor-Management Task Force, several railroads adopted "Operation: Red Block" and entered into Rule G-bypass agreements. (The New England Task Force has since ceased general activities due to the withdrawal of a major railroad; however, the carriers and labor organizations are continuing the alcohol/drug prevention programs.)

These voluntary programs were designed as demonstration projects, wherein Federal financial assistance would act as seed money or as a catalyst to encourage labor and management to experiment with innovative, promising concepts and ideas. To a large extent this has been accomplished.

Mr. COUGHLIN. Are there any requirements on railroad management in your new alcohol and drug rule to provide additional alcohol and drug counseling services for their employees?

[The information follows:]

The new rule requires all railroads with more than 15 employees covered by the Hours of Service Act to establish a program for the identification and treatment of troubled employees.

The railroad's Employee Assistance Program Counselor is required to arrange to have the employee evaluated. When treatment is required, the railroad must grant the employee a leave of absence to complete treatment. When employees establish control over their problem, the EAP Counselor must arrange for the employee to return to work.

Employees may be required to participate in a followup treatment program for up to two years. Employees may self-refer or be referred for assistance by a fellow employee.

An employee who is evaluated and found not to be affected by an identifiable and treatable condition must be returned to work within 5 days of completing the evaluation.

Mr. COUGHLIN. Please provide for the record a funding breakdown of all labor/management cooperative projects for fiscal years 1984, 1985 and 1986.

Please also list the participants and accomplishments of each project.

[The information follows:]

FEDERAL RAILROAD ADMINISTRATION LABOR/MANAGEMENT PROGRAM

Project	FY 84	FY 85	FY 86	Participants	Accomplishments
Houston Railroads	$200,000 (L/M) 182,000 (Safety) 110,000 (C/M) $492,000	Terminated		All (7) Houston Railroads UTU	The Houston Terminal Project was particularly successful in developing a joint labor-management approach to technological change. The Terminal Information Exchange System developed by the project team was the first computerized rail information system in any major port area. Changes implemented by the team are estimated to save $1.7 million annually for the Houston railroads.
New England Railroads	$225,000	None	None	All NE Railroads (20 U.S. plus 2 Canadian Lines) 4 Labor Organizations	The NE L/M Project team has conducted 31 projects, including demonstration trains, employee Assistance Programs, obtained by-pass agreements and analyzed many aspects of the New England Railroads.
Milwaukee (Soo) Railroad	$201,193	98,000	None	Milwaukee Railroad BRAC	Milwaukee management has credited their program with cost savings in excess of $7.5 million and with assisting in that company's successful emergence from reorganization.
Conrail	$200,000	Federal Participation Discontinued		Conrail UTU BRAC	Conrail has documented annual savings of $2.75 million as a result of their pilot quality circle program, with additional savings expected as the program is implemented system-wide.
Northern Illinois Railroad Corp.	$104,000	75,000 (L/M) 75,000 (Safety)	None	NIRC 13 Labor Organizations	Major accomplishments to date has been the 13 labor organizations working with management on a full range of substantive matters relating to improved source reliability, cost avoidance, cost effectiveness, and increased ridership.
Alcohol/Drug Program	$ 22,000	185,000	25,000		Funds are used to promote voluntary alcohol and drug prevention programs. In 1984, FRA hosted a national conference. In 1985, FRA sponsored five regional prevention seminars which highlighted "Operation: Red Block."

223a

UNION STATION FUNDING REQUIREMENTS

Mr. Coughlin. On page 28, you propose to spend $4.62 million for Washington Union Station. Of this amount, $3.5 million would pay for rent, and $1.12 million for minimal maintenance, operation and security services.

You recently announced an agreement with a group of private developers in which they would begin to pay $1 million rent on this building. Why haven't you reduced your $4.6 million request accordingly?

Mr. Riley. The reason is that the rental that the developer pays begins when he formally occupies the building, on the completion of the rehabilitation.

This year while we are rehabilitating the building we still have to pay the rent, and all of the other expenses.

The developer will make investments in the building prior to his time of occupancy, but he won't be paying the rental until he occupies it.

UNION STATION REHABILITATION REQUIREMENTS

Mr. Coughlin. When did you say rehabilitation would be completed?

Mr. Riley. 1988. We hope to have it open in 1988. It's conceivable that it could be earlier than that. There can always be delays. But I am assuming early 1988.

Mr. Coughlin. I fought converting that into a visitor's center when that was done some years back.

Mr. Riley. I think you were very wise, and I really thought that we ought to have had a celebration when the pit was filled in last week, and made that a formal day of celebration.

UNION STATION SUBLEASE AGREEMENT

Mr. Coughlin. Could you briefly explain the major points in your agreement with the Union Station developers?

Mr. Riley. Let me yield to Mark Lindsey who has been both a lawyer and a program manager on this, and was actively involved in the negotiation of the agreement, to give you a summary of it.

Mr. Lindsey. The agreement provides for what will in the end be a 99-year term. It's a 29-year initial term with five 14-year intervals. It's a net lease, so that the developer takes over the responsibility for the building wholesale. He pays us. We have no further responsibilities.

The developer is responsible for operating and maintaining the building, and for leasing out all of the facilities within it.

How much more about the agreement would you like to know? It's a big one, and I can go on for quite a while.

Mr. Coughlin. Counsel tells me that covers it.

Please provide for the record a copy of your agreement with the Union Station developers.

[The information follows:]

[**Clerk's note.**—A copy of the entire agreement was submitted for Committee files.]

SUBLEASE AGREEMENT

between

UNION STATION REDEVELOPMENT CORPORATION,

as Lessor

and

UNION STATION VENTURE, LTD.,

as Lessee

Dated as of October 31, 1985

SUBLEASE AGREEMENT

Table of Contents

ARTICLE 1. DEFINITIONS 2

ARTICLE 2. DEMISED PREMISES 10

ARTICLE 3. TERM

Section 3.1 Term 11
Section 3.2 Extensions 11

ARTICLE 4. RENT AND PAYMENTS

Section 4.1 Base Rent 12
Section 4.2 Participation Rent 13
Section 4.3 Index Rent 14
Section 4.4 Additional Rent 14
Section 4.5 ITC Rent 15
Section 4.6 Illustration of Rent 15

ARTICLE 5. PREFERENCES

Section 5.1 Index Preference 15
Section 5.2 Additional Preference 15
Section 5.3 Deferred Preferences 16
Section 5.4 Equity Preferences 16
Section 5.5 Rights to Project Cash Flow 17

ARTICLE 6. TAXES, UTILITIES AND OTHER CHARGES

Section 6.1 Taxes 17
Section 6.2 Utilities 18
Section 6.3 Payments Under the Ground Lease and the DOT Lease 18

ARTICLE 7. DEVELOPMENT OF PROJECT

Section 7.1 Cooperative Development 18
Section 7.2 Plans and Specifications 19
Section 7.3 Improvements by Lessor 20
Section 7.4 Improvements by Lessee 22
Section 7.5 Modifications to Work Plans; Tenant Improvements 24
Section 7.6 Permits, Approvals, and Compliance with Laws 24
Section 7.7 Leasing of Retail Space 24
Section 7.8 Allocation of Costs of Development 25
Section 7.9 Coordination of Construction 25
Section 7.10 Construction Warranties and Guarantees 25
Section 7.11 Acceptance of Work 26
Section 7.12 Pedestrian Access to Union Station 26

Section 7.13 Metro Connection 26
Section 7.14 Storm Drainage System 26
Section 7.15 Loading Docks; Refuse Removal 27
Section 7.16 Grand Opening Program 27

ARTICLE 8. AMTRAK

Section 8.1 Amtrak Office Space Lease 27
Section 8.2 Amtrak Train Station Lease 28
Section 8.3 Facilitation By Lessor 29

ARTICLE 9. PARKING FACILITY

Section 9.1 Construction 29
Section 9.2 Use 29
Section 9.3 Additional Parking 30

ARTICLE 10. TAX INVESTMENT CREDITS

Section 10.1 Rehabilitation Tax Credits 30
Section 10.2 Legislation 31

ARTICLE 11. LESSEE FINANCING AND REFINANCING

Section 11.1 USV Development Budget 31
Section 11.2 USV Financing Plan 31
Section 11.3 Refinancing of Debt 32

ARTICLE 12. OPERATION OF THE PROJECT

Section 12.1 Use of Project 33
Section 12.2 Easements 33
Section 12.3 General Operating Responsibility 33
Section 12.4 Lessee Service and Supply Contracts; Rules and Regulations 35
Section 12.5 Repairs and Maintenance 35
Section 12.6 Capital Repairs, Alterations, Additions and New Buildings 36
Section 12.7 Capital Maintenance Reserve Fund; Structural and Other Major Repairs 39
Section 12.8 Annual Management Plan 41
Section 12.9 Records and Reports 43
Section 12.10 Compliance with Laws 43

ARTICLE 13. DEPRECIATION 44

ARTICLE 14. MINORITY BUSINESS PARTICIPATION PLAN AND AFFIRMATIVE ACTION PLAN

Section 14.1 Minority Business Participation Plan 45
Section 14.2 Affirmative Action Plan 45
Section 14.3 Nondiscrimination 45

ARTICLE 15. INSURANCE

Section 15.1 Insurance Prior to Grand Opening; Insurance of Contractors 46
Section 15.2 Casualty Insurance 47
Section 15.3 Liability Insurance 47
Section 15.4 Boiler and Machinery Insurance 48
Section 15.5 Rental Value Insurance 48
Section 15.6 Other Insurance 48
Section 15.7 Cost of Insurance 48
Section 15.8 Terms of Policies 48
Section 15.9 Application of Proceeds 49
Section 15.10 Proceeds from Rent Insurance Policies 49
Section 15.11 General Terms of Insurance 49
Section 15.12 Failure to Maintain Insurance 50
Section 15.13 Obligation of Collection 50
Section 15.14 Separate Insurance 50
Section 15.15 End of Demised Term 51

ARTICLE 16. LIENS

Section 16.1 No Power in Lessee to Create 51
Section 16.2 Discharge of Liens by Lessee 51
Section 16.3 No Consent or Waiver of Lessor 51
Section 16.4 No Powers in Lessor to Create 52
Section 16.5 Discharge of Liens by Lessor 52
Section 16.6 Contest 52

ARTICLE 17. EXCULPATION AND INDEMNITY

Section 17.1 Exculpation of Lessor 52
Section 17.2 Indemnification of Lessor 53
Section 17.3 Limitation on Lessee Liability to Lessor 53
Section 17.4 Exculpation of Lessee 54
Section 17.5 Indemnification of Lessee 54
Section 17.6 Effect of Insurance 54

ARTICLE 18. DAMAGE AND DESTRUCTION

Section 18.1 Total Damage and Destruction; Election to Rebuild 54
Section 18.2 Partial Damage or Destruction; Election to Rebuild 56
Section 18.3 Terms of Restoration 56
Section 18.4 Lessee Failure to Restore 58
Section 18.5 Expiration of Sublease 58
Section 18.6 Disputes 58

ARTICLE 19. CONDEMNATION

Section 19.1 Total Taking 59
Section 19.2 Partial Condemnation 59
Section 19.3 Terms of Restoration 60
Section 19.4 Reduction of Rent 60
Section 19.5 Failure to Restore 60
Section 19.6 Expiration of Lease 61
Section 19.7 Temporary Condemnation 61
Section 19.8 Right to Participate in Proceedings 61
Section 19.9 Disputes 61

ARTICLE 20. ENCROACHMENT 62

ARTICLE 21. ASSIGNMENT, SUBLETTING AND MORTGAGES

Section 21.1 No Sale or Assignment by Lessee 62
Section 21.2 Special Remedies for Wrongful Assignment 62
Section 21.3 Requirements of Tenant Subleases 62
Section 21.4 Mortgage of Project 63
Section 21.5 Assignment to Leasehold Mortgagee 63
Section 21.6 Sale of Interests in Lessee 63

ARTICLE 22. TENANT SUBLEASES - NON-DISTURBANCE AND ATTORNMENT

Section 22.1 Assignment of Tenant Subleases 63
Section 22.2 Covenants of Lessee with Respect to Subleases 64
Section 22.3 Non-Disturbance of Subtenants 64
Section 22.4 Priority of Leasehold Mortgage in Certain Cases 64

ARTICLE 23. REMEDIES OF LESSOR

Section 23.1 Termination 65
Section 23.2 Right to Cure 66
Section 23.3 Surrender of Premises 67
Section 23.4 Right to Relet 67
Section 23.5 Obligations of Lessee 67
Section 23.6 No Waiver by Lessor 68
Section 23.7 Injunctive Rights 68

ARTICLE 24. REMEDIES OF LESSEE

Section 24.1 Termination 68
Section 24.2 Right to Cure 70
Section 24.3 Right of Setoff 71
Section 24.4 Obligations of Lessor 71
Section 24.5 No Waiver by Lessee 71
Section 24.6 Injunctive Rights 71

ARTICLE 25. CUMULATIVE REMEDIES 72

ARTICLE 26. RIGHTS OF LEASEHOLD MORTGAGEE

Section 26.1 Notice of Default 72
Section 26.2 Right to Cure 72
Section 26.3 Remedies Under Leasehold Mortgage 73
Section 26.4 Notice of Cancellation; Right to Sublease 73
Section 26.5 No Amendments 74
Section 26.6 Arbitration 75

ARTICLE 27. RELATED AGREEMENTS

Section 27.1 Development Agreement 75
Section 27.2 Non-Disturbance of Lessee 75
Section 27.3 Attornment 76
Section 27.4 Security Agreement and Assignment of Rents 76
Section 27.5 Survey 76
Section 27.6 Letter of Credit 77

ARTICLE 28. REPRESENTATIONS AND WARRANTIES OF LESSOR AND LESSEE

Section 28.1 Representations and Warranties of Lessor 77
Section 28.2 Representations and Warranties of Lessee 79
Section 28.3 Survival 80
Section 28.4 Opinions of Counsel 80

ARTICLE 29. ARBITRATION

Section 29.1 Arbitrable Cases; General Procedures 80
Section 29.2 Conclusive Effect of Decision 81
Section 29.3 Expenses 81
Section 29.4 Special Qualifications of Arbitrators in Certain Cases 81
Section 29.5 Alternative Methods of Resolution 81

ARTICLE 30. NOTICES 82

ARTICLE 31. QUIET ENJOYMENT AND OTHER COVENANTS OF LESSOR

Section 31.1 Quiet Enjoyment 83
Section 31.2 Other Covenants of Lessor 83

ARTICLE 32. COVENANT TO YIELD POSSESSION 83

ARTICLE 33. SALE OF LESSOR'S INTEREST; LESSEE RIGHT OF FIRST REFUSAL 84

ARTICLE 34. ARCHITECT OF THE CAPITOL SITE 85

ARTICLE 35. DEVELOPMENT AGREEMENT 86

ARTICLE 36. PRELIMINARY DEVELOPMENT AGREEMENT 86

ARTICLE 37. ESTOPPEL CERTIFICATES

Section 37.1 Lessee Certificate 86
Section 37.2 Lessor Certificates 86
Section 37.3 Secretary Certificates 87
Section 37.4 Owners Certificate 88
Section 37.5 Fee Mortgagee Certificate 88

ARTICLE 38. FORCE MAJEURE 89

ARTICLE 39. LAW OF AGREEMENT 89

ARTICLE 40. CAPTIONS 89

ARTICLE 41. COUNTERPARTS 89

ARTICLE 42. PARTIAL INVALIDITY 90

ARTICLE 43. SUBORDINATION OF SUBSEQUENT MORTGAGES 90

ARTICLE 44. SUCCESSORS AND ASSIGNS 90

ARTICLE 45. NO PARTNERSHIP 90

ARTICLE 46. CURRENCY 91

ARTICLE 47. INCORPORATION OF CERTAIN MATTERS BY REFERENCE 91

UNION STATION RENT INCREASES

Mr. **Coughlin**. We understand that the basic $1 million a year rental fee to be paid by the developers will be inflated to reflect only 40 percent of any increase in the consumer price index.

Why did you agree to such a low percentage? I doubt if the Coast Guard, for instance, could get a similar deal from their contractors.

Mr. **Lindsey**. Well, we arrived at it through negotiation, and the 40 percent of CPI is fairly typical. You'll find a great many agreements of this sort at 20 percent.

Mr. **Coughlin**. Any at 100 percent?

Mr. **Lindsey**. No, none that I'm aware of in this type of deal. The argument on the other side is that there are whole elements of cost that don't inflate at all, and that there needs to be some kind of balance.

UNION STATION PROFIT INCOME

Mr. **Coughlin**. I guess the Coast Guard is not doing so well, then.

I believe your agreement also requires the developers to pay the government 50 percent of all profits remaining after allowing for operating costs, loan payments, and a 10 percent return on their investment.

Do you expect that this provision will really generate much income for the federal government?

Mr. **Lindsey**. Down stream, yes.

Mr. **Coughlin**. What's your yearly estimate of the revenue that this 50 percent provision would produce?

Mr. **Lindsey**. We would like to share that with the Committee privately, if we can. Because the developer views those revenues as confidential financial data that he would not like his competition to know.

Mr. **Coughlin**. That's fine.

Mr. **Riley**. We have the data, and we can present it to you in an in camera manner.

UNION STATION PARKING REVENUES

Mr. **Coughlin**. How does this agreement address the fees from the adjacent parking garage? Who would receive those revenues, and how much would be generated per year?

Mr. **Lindsey**. Those revenues will go to the Union Station Redevelopment Corporation, to which we've subleased the project, and which in turn subleases to the developer.

The parking garage is not sublet to the developer. USRC keeps that and receives all of the revenues. And we're updating our cash flow now, and we'll be glad to share that with you.

Mr. **Coughlin**. How much revenue is that per year? Can you provide that for us?

Mr. **Lindsey**. Yes, we can. I would prefer to provide it as an updated number for the record, if we may.

[The information follows:]

In the first year after grand opening of the project, we expect USRC to receive about $1,625,000 in net revenue from the parking garage, assuming that we have

only the 1296 spaces now under construction. We currently project the following revenues for the pro forma period:

2nd year	$1,707,000
3rd year	1,793,000
4th year	1,883,000
5th year	1,977,000
6th year	2,075,000
7th year	2,179,000
8th year	2,288,000
9th year	2,403,000
10th year	2,523,000
11th year	2,649,000
12th year	2,781,000

We want to build 800 additional spaces if funds permit, which would enable us to increase the revenues substantially.

UNION STATION FEDERAL REVENUES

Mr. COUGHLIN Please provide for the record a projection of expected federal revenues to be derived from the Union Station project broken down by source and projected out on a yearly basis over the next 29 years

[The information follows:]

As we discussed during the hearing, we will be pleased to share that information with you confidentially because it contains confidential financial information of the developer's that should not be disclosed on the public record. We are able to project only 12 years, however, not 29 years; a projection in excess of 12 years would be so speculative as to be of little value.

USRC ADMINISTRATIVE COSTS

Mr. COUGHLIN. Please also explain for the record the financing arrangements you have entered into for the administrative costs of the USRC, and also provide a staffing and dollar cost projection of USRC costs for each of the next five years.

[The information follows:]

During the development period, USRC's costs are paid out of the $70 million Amtrak has committed to the project, except for the costs of operating and maintaining Union Station which FRA pays from funds appropriated for the purpose. Once the redeveloped station opens and begins to generate revenue, we expect USRC's costs to be paid out of revenues from the project. We expect USRC's staff to remain constant at five during the next five years. Those five are the president, the vice president, the contract administrator, an executive secretary, and a half-time receptionist/secretary. Other needed services are provided by FRA or Amtrak employees or contracted out.

We expect USRC's costs and total budget, exclusive of the operations and maintenance costs paid by FRA, to be as follows:

Fiscal year	Operations and professional services	Total budget
1987	$1,563,250	$31,613,250
1988	1,065,276	5,343,444
1989	576,228	576,228
1990	441,388	441,388
1991	468,907	468,907

USRC STAFFING

Mr. COUGHLIN. Please also provide for the record a breakdown of current USRC staffing show a job title and salary for each position.

[The information follows:]

President	$88,000
Vice President	62,850
Contract Administrator	37,800
Executive Secretary	26,460
Receptionist/Secretary (half time)	9,965

NATIONAL VISITOR CENTER FACILITIES ACT

Mr. COUGHLIN. You have proposed a legislative general provision to the appropriations bill amending the National Visitor Center Facilities Act of 1968, as amended. Why is this amendment necessary, and why did you propose it in an appropriations bill?

Mr. RILEY. I think the reference is to Section 310 of the DOT general provisions, and essentially what we are doing is seeking authority to allow the Secretary to sell Union Station—at least in theory—to the developer or to a private sector owner.

The reason is this: The developer had to have the ability to be sure of his costs and tenancy in excess of 25 years to get long-term financing. Obviously no one is going to finance a 25 to 35 year loan if there's a question about the tenants ability to stay in the premises after the year 1999.

Our lease on the station only runs until the year 1999. At that point we do have an option to buy the station; we have no alternative, frankly, but to buy the station. If we did not exercise that option and purchase the station, it could not be redeveloped.

And so we will, in fact, exercise that option.

However, it does not really make sense for the Federal government to purchase and own a profit-making development, which is already protected by the Historic Preservation Act.

So what we're simply seeking to do is to get around the difficulty of government having to make a long term investment in buying Union Station by allowing the Secretary to sell her lease privileges or sell the station as she exercises that option to the developer or to another party.

And the sale would have to be, of course, subject to all of the existing agreements, the Union Station agreement, developer, Amtrak, and District of Columbia.

Mr. COUGHLIN. Please expand on your answer for the record.

[The information follows:]

The Administration believes it would not be consistent with the President's privatization initiative for the Government to own Union Station over the long term, once the goals of the Union Station Redevelopment Act of 1981 have been achieved. It would be preferable for the Government never to own the station but, as I explained, redevelopment of Union Station is not economically feasible unless we acquire title so that we can assure the developer of long-term possession of the property. General Provision 310 would accomplish that by permitting the Secretary to sell Union Station to the private sector, subject to all of the existing agreements. Because the agreements we have entered into with the developer provide a right of first refusal if we ever sell Union Station, it is likely that the developer would buy it unless someone else offered us so high a price that it would be uneconomic for the developer to match it.

AMTRAK INVESTMENT IN UNION STATION

Mr. COUGHLIN. Amtrak has agreed to put up $70 million for this renovation work. Is that to be treated as a loan? If so, what are the terms for repayment?

Mr. RILEY. That is not a loan. That is an Amtrak capital investment for which they are receiving a first class station. There is no repayment contemplated.

Mr. COUGHLIN. Please provide for the record a breakdown of all drawdowns that have been made to date against Amtrak's $70 million commitment showing the date, amount and purpose of each drawdown.

Please also supply a proposed payment schedule for fiscal years 1986 and 1987 in the same format.

[The information follows:]

USRC draws funds from the Amtrak commitment by writing checks against its own account into which Amtrak deposits funds as needed. Therefore, a detailed breakdown of checks or deposits is not very meaningful. In the aggregate since USRC was formed in April of 1983, USRC has spent the following amounts on major items through January 31, 1986:

USRC salaries, rent and operations	$920,803
Accounting fees	26,000
Legal fees	109,484
Executive search	31,135
Other consultants	876,169
Inspection	59,735
Architects	3,823,503
Construction manager	568,580
Construction	1,820,440
Total	$8,236,849

Since the end of January, USRC has entered into and completed a contract for demolition needed to clear the way for the main rehabilitation work. That demolition contract cost about $1.8 million (the precise amount is still subject to adjustment for some claims and savings).

For the remainder of FY 1986 we expect the following expenditures:

USRC salaries, rent and operations	$435,000
Accounting fees	10,000
Legal fees	37,000
Other consultants	100,000
Architects	1,000,000
Construction manager	400,000
Construction*	24,500,000
Total	$26,482,000

*The amount shown for construction is an estimate of the amount to be paid this year. We plan to award the main construction contract in June which will require that the full amount of the contract, which we expect substantially to exceed $25 million, be obligated.

For FY 1987, we project the following expenditures:

USRC salaries, rent and operations	$648,250
Accounting fees	15,000
Legal fees	50,000
Other consultants	150,000
Architects	100,000
Construction manager	600,000
Construction	30,050,000
Total	$31,613,250

UNION STATION DEVELOPMENT PLAN

Mr. **Coughlin**. What uses do the developers now propose for Union Station and how important is the Amtrak station to the success of that plan?

Mr. **Riley**. The Amtrak station, the developers propose, in addition to using the station as a rail station, to take the fundamental design back to the one that Burnham drew and implemented when the station was opened in the early 1900's.

They will operate about 190,000 square feet of high class retail, with a good food mall which is consistent with a train station, and they will operate about 80,000 square feet of office space.

Now, the role of Amtrak: Amtrak has the right to occupy its space in the station rent-free. That's a right that it inherited from its predecessors. If, in fact, Amtrak ceased to function, for whatever reason, the station development project would be revised somewhat, but would surely continue. The developer would simply use areas that are now reserved for Amtrak's useage to expand the square footage available for commercial use.

So there would have to be a change in the concept, but there would not have to be a change in the development plan.

REPAYMENT OF AMTRAK INVESTMENT

Mr. **Coughlin**. Would Amtrak's estate get its $70 million back?

Mr. **Riley**. I doubt that Amtrak's estate would get its $70 million back, but, you know, that's like any other investment that a railroad makes. Amtrak makes investments every day on the assumption that it will continue to operate and each of those investments is designed to yield at future income or lower its costs.

Union Station will in fact yield Amtrak some significant future income. It is a good investment for Amtrak, and I believe that any trustee reorganizing the company would list this high among the investments he would want to keep, because it does provide cash flow back into the company.

AOC SITE USES

Mr. **Coughlin**. Under your agreement, what would happen to the AOC site adjacent to Union Station?

Mr. **Riley**. At the moment, a study is being undertaken on the potential uses of the AOC site. Our contract, the contract that we've entered with the developer, gives the developer a right to bid. It gives the developer a right to bid and a right of first refusal on the AOC site project in the event that the project is, in fact, developed in accordance with the proposal that the Union Station Redevelopment Corporation put forth.

And I think what I would like to do on this since it answers the question with specificity is give you a copy of the clause that refers to the developer's right.

[The information follows:]

[**Clerk's note**.—A copy of the pertinent document was submitted for Committee files.]

Mr. **Riley**. The contract with the developer does not commit the Federal government to any course of action on the AOC site. It just gives the developer certain rights in the event that courses are pursued on it.

RAILROAD SAFETY RECORD

Mr. COUGHLIN. Moving on to rail safety, the safety record of the railroad industry has shown striking improvement between 1979 and 1984.

Did things continue to improve in 1985?

[The information follows:]

A preliminary analysis of accident/incident data indicates that 1985 may be considered as having been the best year ever in terms of railroad safety. Record lows were achieved in almost every major category where comparisons are historically made to determine accident/incident trends.

Much of this decrease in the number of accidents/incidents can be attributed to the decrease in railroad operations in recent years. In order to obtain a better comparison of year-to-year changes, accidents/incidents must be normalized by indicators of railroad activity, such as, train miles and employee hours worked. When this is done, the 1985 figures are still impressive.

Total rail-related fatalities declined to an 11 year low of 1,033 in 1985. This is a decrease of 17.2% from 1984, and a decrease of 37.2% from 1978 when the most deaths occurred.

Employee fatalities dropped from 59 in 1984 to 46 in 1985, representing a decrease of 22.0% from 1984, and a decrease of 62.3% from 1978, the worst year.

Rail-highway crossing accidents/incidents resulted in 570 deaths in 1985, down 12.2% from 1984, and down 48.9% from its peak in 1976.

The frequency that employees were hurt while at work per 200,000 hours worked was 8.6 in 1985 compared to 9 in 1984. The highest rate recorded was in 1979 at 12.5, meaning that this rate has improved by 31% since 1979.

Train accidents dropped from 3,712 in 1984 to 3,295 in 1985, an improvement of 11.2%. By comparison, there were 10,991 accidents in 1978. The number of accidents in 1985 has been cut by 70% from the 1978 levels. The frequency of train accidents per million train miles has been reduced by 60% during this period.

RAIL CASUALTY AND ACCIDENT DATA

Mr. COUGHLIN. Please update for the record the rail casualty and accident data found on pages 196 through 199 of last year's hearing record.

[The information follows:]

SUMMARY OF ALL CASUALITIES BY TYPE OF ACCIDENT/INCIDENT AND TYPE OF PERSON

Type Accident/Person	% Of Total 1984	% Of Total 1985	Total Cases 1984	Total Cases 1985	...Killed.. 1984	...Killed.. 1985	..Injured.. 1984	..Injured.. 1985	..Illness.. 1984	..Illness.. 1985
TRAIN ACCIDENTS - RAIL EQUIPMENT ACCIDENT/INCIDENT CASUALTIES										
EMPLOYEE ON DUTY.....	.83	.72	330	252	19	7	302	229	9	16
EMPLOYEE NOT ON DUTY.	.01	.01	2	3	---	---	2	3	---	---
PASSENGER ON TRAIN...	.95	.64	380	224	4	---	376	224	---	---
NONTRESPASSER........	.01	.01	3	3	---	---	3	3	---	---
TRESPASSER...........	.03	.01	10	3	4	1	6	2	---	---
CONTRACTOR EMPLOYEE..	.01	---	2	---	---	---	2	---	---	---
TOTAL............	1.83	1.38	727	485	27	8	691	461	9	16
TRAIN INCIDENT CASUALTIES										
EMPLOYEE ON DUTY.....	12.41	12.26	4,942	4,311	23	16	4,836	4,215	83	80
EMPLOYEE NOT ON DUTY.	.04	.03	16	11	2	1	14	10	---	---
PASSENGER ON TRAIN...	.41	.43	162	150	7	3	155	147	---	---
NONTRESPASSER........	.17	.10	69	35	15	7	54	28	---	---
TRESPASSER...........	2.33	2.23	929	785	466	377	463	408	---	---
CONTRACTOR EMPLOYEE..	.02	.03	9	11	2	2	7	9	---	---
TOTAL............	15.39	15.08	6,127	5,303	515	406	5,529	4,817	83	80
NONTRAIN INCIDENT CASUALTIES										
EMPLOYEE ON DUTY.....	70.26	71.15	27,975	25,030	14	21	27,501	24,648	460	361
EMPLOYEE NOT ON DUTY.	1.07	1.15	427	404	1	1	423	399	3	4
PASSENGER ON TRAIN...	1.09	.78	435	274	1	---	434	274	---	---
NONTRESPASSER........	.90	.68	357	240	6	3	351	237	---	---
TRESPASSER...........	.27	.26	106	90	29	13	77	77	---	---
CONTRACTOR EMPLOYEE..	.26	.29	104	102	5	2	96	99	3	1
TOTAL............	73.85	74.31	29,404	26,140	56	40	28,882	25,734	466	366
RAIL-HIGHWAY GRADE CROSSING ACCIDENT/INCIDENT CASUALTIES (EXCLUDED FROM ABOVE CATEGORIES)										
EMPLOYEE ON DUTY.....	.44	.45	176	157	3	2	173	155	---	---
EMPLOYEE NOT ON DUTY.	.01	.00	4	1	2	---	2	1	---	---
PASSENGER ON TRAIN...	.09	.03	35	11	---	---	35	11	---	---
NONTRESPASSER........	7.60	7.85	3,028	2,762	555	494	2,473	2,268	---	---
TRESPASSER...........	.79	.90	316	317	89	80	227	237	---	---
CONTRACTOR EMPLOYEE..	---	.00	---	1	---	---	---	1	---	---
TOTAL............	8.94	9.24	3,559	3,249	649	576	2,910	2,673	---	---
GRAND TOTALS BY TYPE OF PERSON										
EMPLOYEE ON DUTY.....	83.94	84.57	33,423	29,750	59	46	32,812	29,247	552	457
EMPLOYEE NOT ON DUTY.	1.13	1.19	449	419	5	2	441	413	3	4
PASSENGER ON TRAIN...	2.54	1.87	1,012	659	12	3	1,000	656	---	---
NONTRESPASSER........	8.68	8.64	3,457	3,040	576	504	2,881	2,536	---	---
TRESPASSER...........	3.42	3.40	1,361	1,195	588	471	773	724	---	---
CONTRACTOR EMPLOYEE..	.29	.32	115	114	7	4	105	109	3	1
TOTAL............	100.00	100.00	39,817	35,177	1,247	1,030	38,012	33,685	558	462

NOTE: Rail-highway crossing casualties include those occurring at both public and private crossings

239a

239b

TABLE 2

NONFATAL CASUALTIES TO EMPLOYEES ON DUTY EQUIPMENT ACCIDENTS/INCIDENTS[1]

	1980	1981	Percent Change	1982	Percent Change	1983	Percent Change	1984	Percent Change	1985	Percent Change
Track	126	110	-12.70	93	-15.45	76	-18.28	73	-3.95	69	-5.48
Equipment	63	42	-33.33	39	-7.14	39	-	44	12.82	35	-20.46
Human Factors	286	169	-40.91	120	-28.99	123	2.50	142	15.45	101	-28.88
Other	68	69	1.47	60	-13.04	57	-5.00	52	-8.78	46	-21.16
Subtotal Excludes Rail-Highway Grade Crossings	543	390	-28.18	312	-20.00	295	-5.45	311	5.43	246	-20.90
Rail Highway Grade Crossings[2]	70	61	-12.86	58	-4.91	52	-10.35	86	65.39	82	-4.66
Grand Total	613	451	-26.43	370	-17.96	347	-6.22	397	14.41	328	-17.38

---

[1] Nonfatal casualties include injuries and illnesses. A rail equipment accident/incident is an event. related to the operation of on track equipment which results in reportable damages exceeding an established amount. The threshold was $4,900 in 1985. In 1983 and 1984 it was $4,500, in 1982 it was $3,700, and in 1980 it was $2,900.

[2] Only those rail-highway grade crossing accidents/incidents which exceed the reporting threshold for damage to rail property are included.

TABLE 3

FATALITIES TO EMPLOYEES ON DUTY IN RAIL EQUIPMENT ACCIDENTS/INCIDENTS[1]

	1980	1981	Percent Change	1982	Percent Change	1983	Percent Change	1984	Percent Change	1985	Percent Change
Track	4	1	-75.00	3	200.00	2	-33.33	2	-	1	-50.00
Equipment	0	0	-	1	-	0	-	0	-	-	-
Human Factors	13	5	-61.54	4	-20.00	9	+125.00	15	66.67	6	-60.00
Other	11	3	-72.73	1	-66.67	4	+300.00	2	-50.00	-	-100.00
Subtotal Excludes Rail-Highway Grade Crossings	28	9	-67.86	9	0.00	15	+66.66	19	26.67	7	-63.16
Rail Highway Grade Crossings[2]	0	1	-	3	+200.00	0	-	3	-	2	-
Grand Total	28	10	-64.29	12	+20.00	15	+25.00	22	46.67	9	-59.09

---

[1] Nonfatal casualties include injuries and illnesses. A rail equipment accident/incident is an event related to the operation of on track equipment which results in reportable damages exceeding an established amount. In 1985 the threshold was $4,900. In 1983 and 1984 the threshold was $4,500, in 1982 it was $3,700, and in 1980 this threshold was $2,900.

[2] Only those rail-highway grade crossing accidents/incidents which exceed the reporting threshold for damage to rail property are included.

TABLE 4

RAIL EQUIPMENT ACCIDENTS/INCIDENTS BY CAUSE[1]

	PER MILLION MILES					PERCENT OF TOTAL					
	1983	1984	Change	1985	Change	1983	Change	1984	Change	1985	Change
Track	2.84	2.49	-12.33	19.85	-7.63	40.58	5.27	37.96	-6.46	37.38	-1.53
Equipment	1.14	1.11	-2.64	1.01	-9.01	16.29	-7.02	16.90	3.75	16.46	-2.61
Human Factors	.08	1.85	-6.57	1.77	-4.33	28.19	.75	28.16	.04	28.87	2.53
Other	.82	0.79	-3.66	.79	-	11.27	-4.4	12.06	2.82	12.78	5.97
Subtotal Excludes Rail-Highway Grade Crossings	6.77	6.24	-7.83	5.86	-6.09	N/A	N/A	N/A	N/A		
Rail Highway Grade Crossings[2]	.24	.32	33.34	.28	-12.50	3.33	-14.18	4.90	47.95	4.52	-7.76
Grand Total	7.00	6.56	-6.29	6.14	-6.41	100.00					

---

[1] A rail equipment accident/incident is an event related to the operation of on track equipment which results in reportable damage to rail property or rail equipment which exceeds an established amount. In 1985 the threshold was $4,900. In 1983 and 1984 the threshold was $4,500.

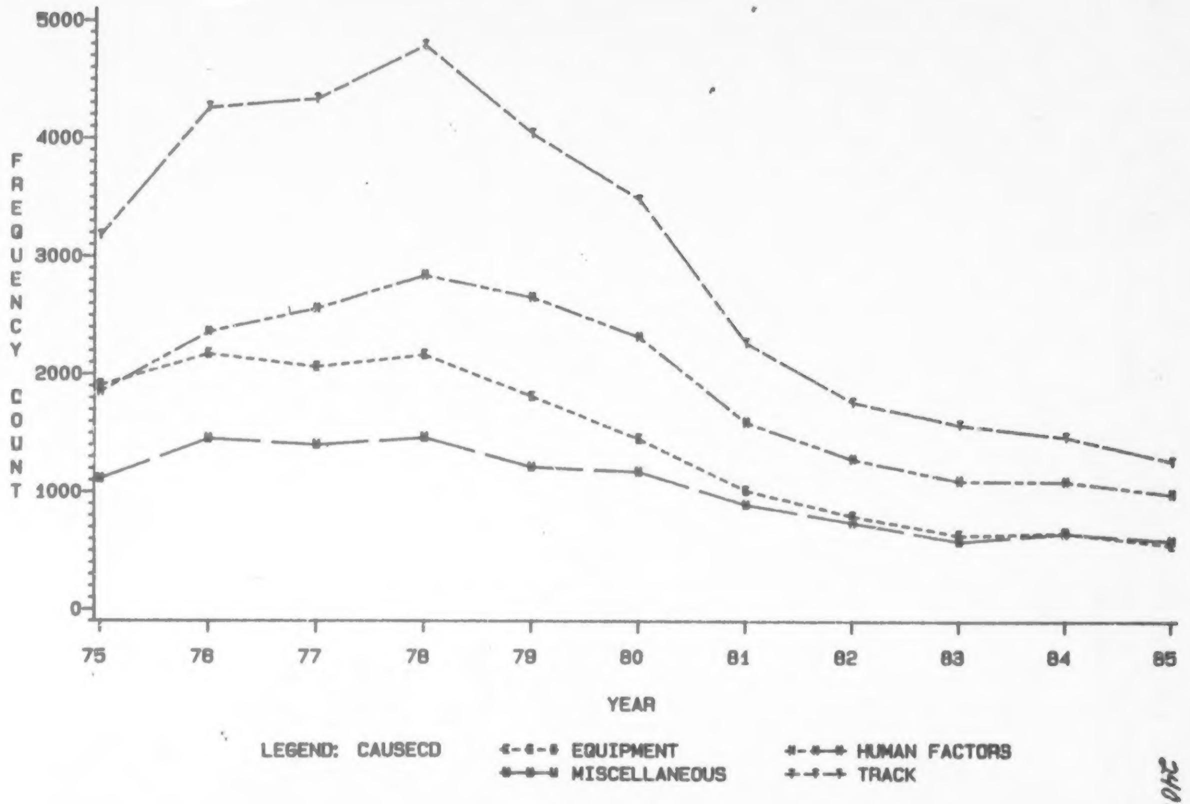
[2] Only those rail-highway grade crossing accidents/incident which exceed the reporting threshold are included.

TRAIN ACCIDENT DATA

Mr. **Coughlin.** Please also update for the record the train accident graph on page 201 of last year's hearing record.

[The information follows:]

TRAIN ACCIDENTS, 1975 TO 1985



INSPECTION DATA

Mr. COUGHLIN. Please also update for the record the inspection data found on page 202 of last year's hearing record by adding a 1985 column.

[The information follows:]

INSPECTION DATA

	1983	1984	1985
Track:			
Number of inspections	18,041	17,590	19,591
Miles inspected	378,169	385,413	404,005
Records inspected	195,832	217,271	257,287
Defects recorded	108,010	99,268	107,121
Signal:			
Number of inspections	4,582	4,509	4,228
Units inspected	55,038	56,435	51,134
Records inspected	61,403	50,445	68,826
Defects recorded	9,897	10,653	9,469
Motive power and equipment:			
Number of inspections	21,547	21,571	21,845
Locomotives inspected	37,914	37,618	32,729
Cars inspected	1,042,106	1,042,260	1,002,517
Defects recorded	164,816	169,372	151,484
Operating practices:			
Number of inspections	10,603	13,182	12,511
Complaints received	261	329	238
Defects recorded	2,466	3,080	3,053
Hazardous materials:			
Number of inspections	6,491	8,670	8,399
Tank cars inspected	42,071	53,881	59,677
Defects recorded	9,166	10,597	10,129

SYSTEM SAFETY ASSESSMENTS

Mr. COUGHLIN. Please also provide for the record the summaries of all system safety assessments performed since the date of those summarized on pages 202 and 203 of last year's hearing record.

[The information follows:]

242a

Delaware and Hudson - (D&H)

The assessment conducted shortly after the D&H railroad was acquired by Guilford Transportation Industries revealed deficiencies in all areas of operation.

In the signal area it was found that an improvement in the quality of maintenance was necessary. It was recommended that an evaluation of signal territories be made to determine the need for new assignments or realignment of territories.

Generally the track met the minimum safety level required by the Federal standards. However, many areas of the railroad were marginal and because of this much time is spent repairing emergencies and not maintaining track.

A weakness in the quality control process was noted in the maintenance of locomotives and cars. A more effective inspection and test program, together with improved training could improve conditions.

The overall compliance with Operating Practices regulations needed to be improved. Problems were found to exist in the area of: rear end marking devices, the carrier's test and observation program, and confusion over some of the operating rules.

Since the assessment the carrier has addressed each of the deficiencies noted and has shown a dramatic improvement in their accident record.

Amtrak Northeast Corridor -

The assessment indicated that the Northeast Corridor region of Amtrak is being managed effectively and operated with a high regard for the safety of the passengers, employees and the general public.

The condition of the railroad and its rolling stock has greatly improved since conveyance to Amtrak in 1976, due largely to the Northeast Corridor Improvement Program. Management has been able to keep pace with these physical improvements; Amtrak appears capable of capitalizing on these improvements to provide fast and safe transportation.

2421

Nationwide Amtrak Track -

The FRA conducted an intensive survey of all mainline track utilized by Amtrak. Three automated track geometry vehicles surveyed a total 42,415 miles of track.

In order to obtain a general assessment of trackage conditions and still keep the analysis manageable and timely a 5,000 mile sample was selected and compared with similar data from earlier surveys conducted in 1980.

This analysis revealed that:

1. Posted speeds for the sampled track have increased, indicating a general upgrading of track maintenance. This is further substantiated by the fact that a higher percentage of the 1984 track miles meets the FRA standards than 1980.

2. The exceptions that were found are not considered to present a hazard. The magnitude and the rate of occurrence of exception are comparable to typical well-maintained track.

In summary the exceptions found during the Amtrak network survey were few in number and generally caused by isolated marginal defects. As in general practice the defects found were promptly corrected.

Burlington Northern -

The FRA assessment generally revealed that the Burlington Northern is well managed and staffed by competent, well-trained employees. Overall compliance with Federal regulations and carrier rules was at acceptable levels and, in many cases was considerably above the industry average. At the same time, FRA believes operational safety performance could be improved.

In general, BN has been responsive to the findings of the assessment. Especially noteworthy has been the training of employees in hazardous materials, progress made in upgrading the signal system and improvement shown in efficiency testing. Also, a 6.4 million dollar track rehabilitation project is scheduled for May 1986 on the Wisconsin's Division eleventh subdivision.

SEPTA -

The assessment conducted during the first quarter of 1985 focused on each part of SEPTA operations. Particular attention was given to "people programs" such as training and instruction of employees and supervisors, drug and alcohol program, organization structure and emergency programs and procedures.

Items of concern were brought to the attention of SEPTA officials at the time of the assessment and corrective action was taken without delay on those items which were an immediate danger. These items included:

Inadequacies in several areas of employee training and education, including those crafts critical to safety.

Staff officers are relatively inexperienced which has an effect on safety of all aspects of operations.

The personal safety program for employees is inadequate. There are no local safety committees; SEPTA does not provide injury investigation, cause determination and remedial action guidelines for supervisors.

There is not an adequate emergency response program to provide basic guidance for accidents which could occur on line-of-road and which might require passenger evacuation.

Some facilities are antiquated and includes towers and shops where deterioration has reached a level that adversely affects employee morale and personal safety.

The assessment disclosed a total disregard for compliance with Federal regulations by employees and supervisors of all crafts, including blue signal protection, hours of service, power brake regulations, track and signal inspection requirements.

From February 24, to March 7, 1986, FRA field personnel conducted followup activities. A report of these findings is being prepared.

BEST ACCIDENT RECORDS

Mr. **Coughlin**. Which Class I railroads had the lowest and the highest accident rates in 1985. I believe in 1984 the Southern had the best record and the Milwaukee had the worst record.

Mr. **Riley**. In 1985, the Class I railroad with the best accident performance, the best, is the Southern Railroad. The Southern Railroad, as it did in 1984, had the best accident performance in 1985.

It's not only a commentary on good running, and good operations, but good capital investment.

I also want to commend the Santa Fe in 1985, because the Santa Fe finished second. The Southern and the Santa Fe each were substantially better than the rest of the pack, and I think they both deserve commendation.

The Southern Pacific has the worst performance among Class I railroads. Among the smaller railroads, the Denver and Rio Grande had the best performance; the Elgin, Joliet and Eastern had the worst performance.

Now, we do not classify in the way we keep our statistics. We do not classify Amtrak as a Class I railroad. But had Amtrak been classified for these purposes as a Class I railroad, and it is for most others, it would have had the best accident ratio in the nation.

Amtrak's accident ratio was 2.14 per million train miles. The Southern Railroad's was 2.50. The Southern Pacific, in contrast, was 12.33.

Among the smaller railroads, the Rio Grande's was 1.13, which is really an exceptional performance, and the Elgin, Joliet and Eastern's was 24.68, and I think we'll be visiting them.

INSPECTION RESOURCE ALLOCATION

Mr. **Coughlin**. What do you do to focus your inspection resources on the carriers with the worst safety records?

Mr. **Riley**. Well, first we use safety performance as a general guide in determining where we're going to do assessments. We can do about two or three assessments per year, depending on the size of the railroad, and as we did with SEPTA last year, when we see a railroad that's at the bottom of the performance list, they go to the top of our list for assessments.

That's not an inflexible rule, because we know a lot about the accidents, and at times there are factors which would lead us to skip over one carrier or go directly to another. But it is a general guide.

And we also increase—if we determine that on a given carrier there are an unusual number of incidents, say, regarding operating practices—we would increase our operating practice conventional inspections in that area, and we would use our inspectors to focus on that discipline more than they would otherwise do.

Joe, do you want to add anything to that?

Mr. **Walsh**. I would just say that the new approach we've had with the full size assessments, many assessments, and pooling of our inspectors has made the increase, and as these numbers come up—we also analyze them in other ways—but I could assure that when we leave Philadelphia, and our visit to SEPTA, that we'll probably be spending the large majority of the summer out in the Southwest on the Southern Pacific and the Chicago area.

I think that will reflect next year when we come back. You'll see some of those numbers will reverse and others will be the lower.

WORST ACCIDENT RECORD

Mr. RILEY. The Chicago and Northwestern has remained at or near the top in the negative sense of the accidents performance ratios, and we're looking at the CNW for another visit this year.

RAILROAD SAFETY RECORDS

Mr. COUGHLIN. Please provide for the record a listing of the five best and five worst Class I carriers in terms of 1985 accident rates including supporting data.

[The information follows:]

RAILROAD SAFETY RECORDS

Railroad	Accidents	Accidents per million train miles
Alabama Great Southern	1	0.46
Denver and Rio Grande Western	7	1.13
Cincinnati, New Orleans and Texas Pacific	6	1.87
Southern	50	2.50
Florida East Coast	11	3.28
Average All Class I		6.31
Delaware and Hudson	34	13.06
Boston and Maine	51	13.59
Missouri-Kansas-Texas	72	15.56
Milwaukee	178	21.73
Elgin, Joliet and Eastern	33	24.56

RULEMAKING SUMMARY

Mr. COUGHLIN. Please also provide for the record a description of all rail safety NPRM's or final rules issued in fiscal years 1985 and 1986 to date.

Please also show your anticipated timetable for issuing final result where appropriate.

[The information follows:]

Alcohol & drug use.—Published a final rule to address the problem of alcohol and drug use in railroad operations, which became effective on February 10, 1986 (with the exception of the post-accident testing provision, which became effective on March 10, 1986, and the pre-employment screening provision, which becomes effective on May 1, 1986.)

Thermally abused wheels.—Published a final rule to aid in the identification and removal of thermally abused wheels.

Small railroads.—Completed a Safety Inquiry concerning the application of safety regulations to small railroads, which resulted in two rulemakings that will reduce the regulatory burden.

Grade crossing.—Published a report on rail-highway grade crossing safety following a Safety Inquiry concerning the enhancement of public safety at rail-highway grade crossings.

Cabooseless trains.—Issued two Notices of Proposed Rulemaking to respond to the implications of operating freight trains without cabooses:

One proposed amendment of the rear end marker and blue signal rules to (i) clarify the regulatory language concerning the equipping and inspection provisions, (ii) revise the inspection requirement to permit either a visual observation or a radio telemetry verification, (iii) permit expansion of the categories of employees authorized to conduct the visual observations, and (iv) permit the use of a new procedure to protect those making this inspection.

The other proposed amendment of the power brake rules to permit the use of telemetry device to determine the application and release of the brakes on the rear car of a train during the intermediate air brake test.

These proposals must now be reviewed by the rest of the Department and OMB.

STATE INSPECTORS

Mr. COUGHLIN. You have once again proposed termination of the state rail safety grant program.

How many inspectors does this program currently support, in how many states, and how many inspectors in how many states do you believe would continue to perform their job without federal support?

[The information follows:]

Thirty-one States are currently participating in this safety grant program. FRA estimates, from its fiscal year 1984 survey, that 28 of the states will continue to participate in the FRA program with at least 70 of the current 104 inspectors even without Federal funds.

SYSTEM SAFETY PLAN GOALS

Mr. COUGHLIN. Please also update for the record the performance data against your system safety plan safety goals found on page 206 of last year's hearing record.

[The information follows:]

Goal: Improve safety in the transport of hazardous materials by reducing the rate of releases per million hazardous materials car-miles from 0.3 to 0.2.

1976-1980 .349
1981-1985 .200 Percent Improvement 42.7

Actual

1981	1982	1983	1984	1985[1]
.232	.342	.132	.201	.117

Goal: Improve safety in passenger train operations by reducing the rate of passenger fatalities per billion passenger miles from 0.6 to 0.5.

1976-1980 .648[2]
1981-1985 .546 Percent Improvement 15.7

Actual

1981	1982	1983	1984	1985[1]
.339	.874	.283	1.108	.261

Goal: Improve safety for railroad employees by reducing the employee fatality rate per million work hours from 0.10 to 0.08.

1976-1980 .102
1981-1985 .078 Percent Improvement 23.5

Actual

1981	1982	1983	1984	1985[1]
.070	.095	.083	.079	.064

Goal: Improve safety at rail-highway grade crossings by reducing the number of fatalities, as measured by the exposure index [3] from 0.9 to 0.7.

1976-1980 .861[2]
1981-1985 .634 Percent Improvement 26.4

Actual

1981	1982	1983	1984	1985
.692	.674	.603	.636	.549

Goal: Improve safety involving railroad trespasser fatalities by reducing the number of trespasser fatalities per million train-miles from 0.5 to 0.4.

1976-1980 .549
1981-1985 .728 Percent Worsened (32.6)

Actual

1981	1982	1983	1984	1985[1]
.689	.722	.715	.842	.678

---

[1] Preliminary 1985 data.

[2] Percentages do not agree with Systems Safety Plan dated December 1981 due to revised data received.

[3] Train miles x vehicle miles ÷ 10^{18}

STATE INSPECTOR BREAKDOWN

Mr. COUGHLIN. Please update for the record the state inspector breakdown found on pages 207 and 208 of last year's hearing record.

[The information follows:]

Number of State Safety Inspectors

State	Track	Motive Power & Equipment	Operating Practices	Signal Train Control	Total Inspectors	FY 86 Requested Funds
Alabama	2	2			4	$159,097
Arizona	1	1	1		3	62,539
California	2	1			3	139,263
Connecticut	1				1	12,795
Florida	3	2	1		6	174,897
Illinois	4				4	105,528
Iowa	3				3	79,623
Kansas	1				1	27,133
Louisiana	1				1	80,460
Maryland	1	2	1		4	112,616
Michigan	3				3	97,251
Minnesota	2				2	57,400
Missouri	3				3	86,052
Montana	1				1	20,802
Nebraska	1	1			2	46,888
Nevada	1				1	25,822
New Hampshire	1				1	35,849
New Jersey	1				1	37,895
New York	3	3			6	267,178
North Carolina	2	1			3	87,290
Ohio	3	4			7	141,429
Oklahoma	2				2	69,554
Oregon	2	2			4	159,570
Pennsylvania	4	3	1		8	257,994
South Carolina		1			1	47,297
Tennessee	2	2	1	1	6	144,590
Texas	4	3	3		10	269,999
Utah	1	1			2	68,522
Virginia	2				2	71,835
Washington	2	1	1		4	135,031
West Virginia	2	3	—	—	5	127,203
Total	61	33	9	1	104	$3,209,402

It would cost an estimated $3.21 million in Fiscal Year 1986 to fund the program at the current level of 104 inspectors. The 34 inspectors who may not be picked up by the States would therefore be costing the Federal government approximately $94,400 per inspector.

FEDERAL SUPPORT OF STATE INSPECTORS

Mr. **Coughlin**. Assuming your projections are correct, how much would the federal government be paying per inspector for the inspectors that would not be picked up by state-only funds, assuming continuation of the current funding level?

[The information follows:]

It would cost an estimated $3.21 million in fiscal year 1986 to fund the program at the current level of 104 inspectors. The 34 inspectors who may not be picked up by the States would therefore be costing the Federal Government approximately $94,400 per inspector.

STATE GRANT TERMINATION EFFECT SAFETY

Mr. **Coughlin**. Do you still believe, as you have testified in the past that termination of these State grants will not adversely affect rail safety?

Mr. **Riley**. I do, and I think that is particularly true in an era when cutbacks have to be made. I said that before when the issue was presented in the abstract. Now, the issue is a trade-off against other uses. So I think if it was true before, it is even more true today.

STATE VS. FEDERAL INSPECTOR PRODUCTIVITY

Mr. **Coughlin**. Please update for the record the inspector productivity data found on page 210 of last year's hearing record by adding a 1985 column.

[The information follows:]

STATE VS. FEDERAL INSPECTOR PRODUCTIVITY

	Calendar year 1985	
	State	Federal
Track miles inspected per inspector	3,031	2,917
Track defects recorded per inspector	841	743
Track violation reports per inspector	0.48	1.61
Freight cars inspected per inspector	11,482	5,603
Defective units reports as percentage of cars inspected	3.68	3.53
Equipment violations reports per inspector	15.36	28.53

STATE INSPECTOR MATCHING REQUIREMENTS

Mr. **Coughlin**. Please also provide an estimate of Federal funds required to cover 25 percent, 30 percent, 40 percent, and 50 percent of state program costs in fiscal year 1987, and include an estimate of the number of states and inspectors that would opt to drop out at the 25 percent, 30 percent, and 40 percent levels.

[The information follows:]

To maintain the program at the current level of 104 inspectors the State inspectors would require $3.5 million of FRA funding in FY 1987 assuming a continuation of FRA's 50 percent matching share. For FRA to fund only 25, 30, or 40 percent of total program costs, would require $1.75 million, $2.1 million, $2.8 million in Federal funding, respectively.

We estimate that at least 70 State inspectors would remain in the program in the absence of Federal funding. We have not surveyed the States, but we would assume that if FRA provided 25 or 30 percent of the total program costs an estimated 85 State inspectors would remain in the program. With 40 percent FRA funding, an estimated 95 State inspectors would remain.

FEDERAL INSPECTOR STAFFING

Mr. COUGHLIN. As you know the Committee has repeatedly urged the FRA to improve its efforts to staff up to the fully authorized level of 325 federal rail safety inspectors.

In past years, the FRA has been 30 to 50 people short of this level. But, for the last several years, you have reported success in achieving nearly the full complement of inspectors. Have you been able to continue this record?

Mr. RILEY. Yes, we have. The last two years I was up here, I believe that we were at 323 and 325 exactly. We are at 319 today and the reason that we are at 319 is that we had a fairly large number of retirements going into this year. There is a perception among some of the employees out on the safety inspector force, that there may be changes in federal pension plans that would make it to their advantage to retire early or to retire early if they are eligible to do so.

I expect to have those six positions filled within the month.

Mr. COUGHLIN. Please update for the record the federal inspector staffing data found on page 212 and 213 of last year's hearing record.

[The information follows:]

254a

Status of FY 1985 Federal Enforcement Hiring

Type of Position	Authorized Positions	Current On-Board Strength	Differences[1]
Regional Safety Directors	8	6	- 2
Training Inspectors	4	3	- 1
Motive Power and Equipment Inspectors	100	101	+ 1
Track Inspectors	88	74	-14
Operating Practices Inspectors	54	59	+ 5
Signal Inspectors	33	40	+ 7
Hazardous Materials Inspectors	30	33	+ 3
Trainee Inspectors	8	3*	- 5
TOTAL REGIONAL DIRECTORS AND INSPECTORS	325	319	- 6
Clerical	54	49	- 5
TOTAL, FIELD	379	368	-11

[1] Recruitment actions are in process for all vacancies. Supervisors are counted in the appropriate disciplines.

* Does include Transportation Specialist later converted to OP Inspector.

2546

STAFFING-FEDERAL AND STATE INSPECTORS ONBOARD
End of Year Full Time Permanent

	Federal Inspectors					State Inspectors	
	Onboard-Fiscal Years			Projected Fiscal Years		Onboard Dec. 1985	Projected Fiscal Year 1986
	1983	1984	1985	1986	1987		
Regional Safety Directors..	7	8	8	8	8	....	....
Deputy Regional Safety Directors					5	....	....
Motive Power and Equipment Inspectors.....	101	100	100	100	100	33	37
Track Inspectors...........	73	88	88	88	88	60	63
Operating Practices Inspectors...............	52	54	54	54	54	8	10
Signal Inspectors..........	33	33	33	33	33	1	1
Hazardous Materials Inspectors...............	33	30	30	30	30	....	....
Trainee Inspectors.........	6	8	8	8	8	....	....
Training Inspectors........	0	4	4	4	5	....	....
Total................	305	325	325	325	331	102	111

INSPECTOR TRAVEL FUNDING

Mr. COUGHLIN. In the past, the Committee has also urged you to budget for at least 15 travel days per month per inspector. Does your Fiscal Year 1987 request contain sufficient funding to achieve the 15-day level?

Mr. RILEY. Yes, it does.

CIVIL PENALTY ASSESSMENT

Mr. COUGHLIN. Please discuss your two largest civil penalty assessments made in fiscal year 1985.

[Information follows:]

The largest civil penalties FRA is authorized to assess are $10,000 under the Hazardous Materials Transportation Act and $2,500 under the Federal Railroad Safety Act of 1970. These penalty amounts are reserved for only the most serious individual violations. Penalties are assessed against the major railroads on an individual, continual basis throughout the year, as the need is determined by FRA's inspectors in the field. Thus, the "two largest civil penalty assessments" in fiscal year 1985 represent the sum of the individual penalties assessed against two railroads during that year. They were as follows:

Conrail	$1,524,850
Seaboard System	839,100

ACCIDENT TRENDS

Mr. COUGHLIN. Please also update the narrative on accident trends found on page 214 of last year's hearing record.

[Information follows:]

A preliminary analysis of accident/incident data indicates that 1985 may be considered as having been the best year ever in terms of railroad safety. Record lows were achieved in almost every major category where comparisons are historically made to determine accident/incident trends.

Much of this decrease in the number of accidents/incidents can be attributed to the decrease in railroad operations in recent years. In order to obtain a better comparison of year-to-year changes, accidents/incidents must be normalized by indicators of railroad activity, such as, train miles and employee hours worked. When this is done, the 1985 figures are still impressive.

Total rail-related fatalities declined to an 11 year low of 1,033 in 1985. This is a decrease of 17.2% from 1984, and a decrease of 37.2% from 1978 when the most deaths occurred.

Employee fatalities dropped from 59 in 1984 to 46 in 1985, representing a decrease of 22.[illegible]% from 1984, and a decrease of 62.3% from 1978, the worst year.

Rail-highway crossing accidents/incidents resulted in 570 deaths in 1985, down 12.2% from 1984, and down 48.9% from its peak in 1976.

The frequency that employees were hurt while at work per 200,000 hours worked was 8.6 in 1985 compared to 9 in 1984. The highest rate recorded was in 1979 at 12.5, meaning that this rate has improved by 31% since 1979.

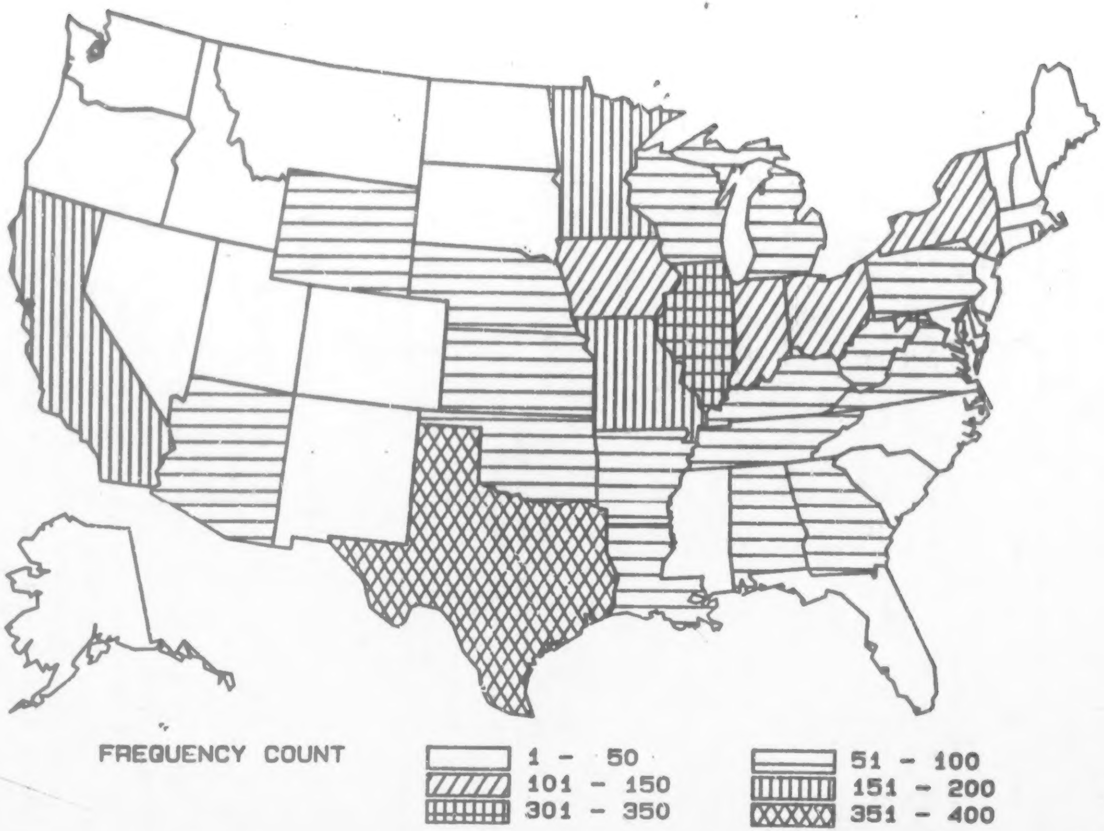
Train accidents dropped from 3,712 in 1984 to 3,295 in 1985, an improvement of 11.2%. By comparison, there were 10,991 accidents in 1978. The number of accidents in 1985 has been cut by 70% from the 1978 levels. The frequency of train accidents per million train miles has been reduced by 60% during this period.

TRAIN ACCIDENTS BY STATE

Mr. COUGHLIN. Please also update for the record the map depicting train accident frequencies found on page 216 of last year's hearing record.

[Information follows:]

1985 ACCIDENTS


FREQUENCY COUNT
1 - 50
51 - 100
101 - 150
151 - 200
301 - 350
351 - 400

OFFSETTING COLLECTIONS

Mr. COUGHLIN. Please provide for the record a breakdown of fiscal years 1985, 1986, and 1987 offsetting collections from federal funds as reported on page 30 of your justification.

[Information follows:]

Through reimbursable agreements in fiscal year 1985, we received $350,000 from the Department of Army to test at the Transportation Test Center a boxcar for transporting Trident Missiles and $25,000 from the Department of Interior for detection and investigation of damages or structural flaws.

In Fiscal Years 1986 and 1987, we estimated what we think will be the maximum conceivable requests for reimbursable services in railroad testing, primarily from Department of Defense funding.

RECOVERY OF PRIOR YEAR FUNDS

Mr. COUGHLIN. Please also provide a breakdown of the $1.768 million recovery in fiscal year 1985 as reported on page 30 of your justification. Please show the name and location of any defaulted contractor and also indicate if such contractor was debarred.

[Information follows:]

A breakdown of the $1.768 million recovery follows:

$722,423 from Railroad Safety's ATIP and Grants-in-aid programs;

1,046,443 from the Railroad Research and Development Appropriation.

Railroad Research and Development recoveries totalling $256,790 are from the closing out of contracts from Policy Support Programs. The balance of the R&D recoveries ($789,653) is a direct result of closing out completed research contracts containing excess unliquidated funds. The majority of this total is from the Track/Train Safety Testing Program with the balance being somewhat evenly distributed among the other program areas. A small amount of the recovery is a direct result of savings in administrative areas, i.e., printing, space, etc.

No contractor defaulted and none were debarred.

ADDITIONAL SAFETY POSITIONS

Mr. COUGHLIN. You are requesting six additional personnel in the rail safety area. Why do you need these people and what would be the impact on rail safety if you did not have them?

Mr. RILEY. What we want to do is to create deputy regional safety chiefs. And the reason we want to do it is this. When the railroads merged into six large regional systems and even the mid-sized bridge carriers now are expanding their scope, the Soo Line has bought the Milwaukee. The Northwestern bought the Old Rock Island Line and it became necessary to pool our inspectors from different regions to do an assessment of a single carrier because many of the carriers now cut across regional lines.

When you have to pool inspectors for an assessment team, it takes a substantial amount of time away from the regional director. Our view is that within those regions with heavy workloads and we are pooling as a common occurrence, there should be a deputy who can run the day-to-day operations of the regions and the conventional inspections when large amounts of time are taken away from the regional director to do assessments. And you will note we have not requested a deputy from every region.

We have studied where we think that we need them and where we do not.

Mr. COUGHLIN. Please explain for the record the need for six additional federal enforcement personnel slots—from 379 to 385.

[Information follows:]

The six additional positions being requested are not for additional inspectors.

Five of the six positions are for Deputy Regional Directors. Implementation of new management tools, such as on-line safety data base access by regional personnel, should significantly improve the productivity of our inspection forces, but additional resources must be devoted to management (the five new positions) to achieve the maximum benefit from these and previously implemented tools and processes.

The sixth requested positions for an alcohol and drug training specialist necessitated by our new alcohol and drug control rule, an area beyond the current scope of the optimalization model.

ATIP VEHICLES

Mr. COUGHLIN. Please also update the ATIP car use data found on pages 220 and 221 of last year's hearing record.

[Information follows:]

The FRA owns six full-size rail vehicles which have been used to survey track geometry. They are T-10: self-propelled track survey vehicle, T-2: a track survey vehicle, T-3: a track survey vehicle, T-1: a crew support vehicle for T-3, T-4: a crew support vehicle for T-2, and T-6: a track survey vehicle used by FRA for track research only.

The FRA also owns three Hi-Rail vehicles which are basically highway trucks equipped with additional sets of small steel wheels to enable operation on the rails. They are: R-1 a rail flaw detection vehicle used for track research only, R-2: a rail flaw detection vehicle formerly used by the Office of Safety now used for FRA R&D Research, R-3: a rail flaw detection vehicle used for testing advanced techniques of flaw detection.

R-1 is at the Transportation Test Center where it is being used for AAR research projects.

R-2 is at TSC—Cambridge—is used by TSC in support of FRA R&D.

R-3 is presently at Washington, D.C.—used by FRA R&D for research projects.

The FRA will operate T-10 in FY 1986, inspecting approximately 25,000 miles of high priority track.

T-2 and T-4 are stored at the Belvoir Military Reservation in Virginia.

T-1 and T-3 are licensed to Guilford Industries.

RESEARCH AND DEVELOPMENT FUNDING REDUCTION

Mr. COUGHLIN. On page 48 you are proposing that we appropriate $9.581 million for research and development in fiscal year 1987 and this actually represents a 35 percent drop in R&D spending levels between fiscal years 1986 and 1987 when carryover funds used in 1986 are included.

Why do you propose such a large spending reduction in the R&D area?

Mr. RILEY. Actually the reduction is only about a 6 percent reduction from the appropriation that we requested a year ago. We had a fairly large carryover. We had over $4 million carryover and we decided that we would take advantage of that opportunity to put it in to safety research when we had it.

The request does not indicate a very large deviation from past requested appropriations. I think it is about 6 percent, give or take a half a percent.

Mr. COUGHLIN. And you will be able to carry out all safety related R&D at this level?

Mr. RILEY. Yes.

TRACK SAFETY RESEARCH

Mr. Coughlin. The largest R&D decrease comes in the area of track safety which you propose reducing by 40 percent from $4.852 million to $2.9 million.

Has this line of research been unproductive?

Mr. Riley. No, it has not. As a matter of fact, it has been very productive, but the points that you raised in questions 30 and 31, track safety and equipment operations and hazardous materials are where we used most of the carryover money. So what you are seeing there is the implication of carryover investment.

And I have to say that if we have a carryover we would consider doing that again for some reasons.

PUEBLO TEST CENTER FUNDING

Mr. Coughlin. How much of your fiscal year 1986 R&D budget will be obligated at the Pueblo Test Center, and how much do you plan to obligate in fiscal year 1987 and how successful has the Test Center been in attracting private R&D contracts?

Mr. Riley. In 1986 we will spend about $6,085,000 at the test center. In 1987 we anticipate spending about $4,510,000.

Now, in 1983 when the test center first went private, of course, a 100 percent of the funding of the Test Center was government funding. Today, the Government is providing about 60 percent and private industry is providing about 40 percent.

Now, I have to say that I would like to see that figure be higher, but I do think that the Center has progressed considerably over the three years that it has been in private hands.

In fact, we are discussing with AAR a possible extension of the Test Center lease that would enable them to make some long-term capital improvements that they would never have the incentive to make under a short lease that may enable them to attract more private business to the Center.

CONRAIL ASSUMPTION OF LABOR PROTECTION PAYMENT

Mr. Coughlin. Under Conrail labor protection, the Appropriations conferees transferred most of the unobligated balance from Section 701 account and directed you to conduct discussions with Conrail's Board of Directors and Management to devise a plan whereby Conrail would assume full financial responsibility for 701 and 702 labor protection payments.

We understand that as of March 1st, no one from DOT has contacted Conrail to work out this plan.

Why is that?

Mr. Riley. We have been in contact with Conrail and I have to tell the Committee, by way of overview, that for reasons I cannot completely assure you about because I am not sure what they are—I first became aware of this language about the second week of February. When I did become aware of the language, I wrote a letter to Mr. Crane and to Roger Hillas on the Board of Directors which I will submit for the record, and that letter was written in February, indicating that I had become aware of the language and that I was appointing a three person FRA team myself—my

Deputy, Mr. Rooney, and Bill Loftus who now administers those programs and we were prepared to sit down immediately with Conrail to negotiate a transfer of those responsibilities contemporaneous with whatever action Congress took on the sale.

Now, yesterday—I have not received a response from Roger Hillas, Chairman of the Council Board of Directors, yet. I did receive a response from Stan Crane, Chairman of Conrail. Mr. Crane informed me, "That there was nothing in the language of the report that suggests a sense of the conferees that these discussions occur concurrently with the consideration of the legislation authorizing the sale of Conrail and termination of the protection programs."

He did say, however, that I could contact Robert Swert and that he would have the authority to appoint appropriate Conrail personnel if the discussions ensued.

Now, it is my intention to contact Bob Swert when we finish these two days of hearings and suggest that we establish a meeting at his earliest convenience.

But we have an exchange of letters on this and I have not heard from the Board, yet.

Mr. COUGHLIN. Do you have any idea as to when we might expect to see a new labor protection plan?

Mr. RILEY. Well, I think that the language that the Committee has included, frankly, is well founded and I think that you should arrange this kind of transfer and I am prepared to do it at any time.

The ball is really in Conrail's court on this. Now, that I have this letter, which I received yesterday, I will contact Bob Swert at once and as soon as they are prepared to meet, we are.

CONRAIL LABOR PROTECTION TRANSFER

Mr. COUGHLIN. You propose transferring the remaining balance of $4.565 million in the Conrail Labor Protection account to the office of the administrator.

Since you have been slow in undertaking the necessary discussions with Conrail, how confident are you that there will not be claims against this amount in the fiscal year 1986 that will have to be paid?

Mr. RILEY. Well, right now, the Railroad Retirement Board which makes the actual payments has about $3.75 million remaining to pay benefits and to cover administrative costs in 1986.

That money is in their hands. It is not part of our transfer. If spendout occurs at the historic rate that ought to be enough. I want to note, parenthetically for you, however, that February payments were unusually high—they were over $990,000 and Conrail is shedding a very large number of employees right now as their traffic volume falls. So we have to watch that number. But if the payout stays at its traditional or historic rate, the $3.75 million the Railroad Retirement Board now has should be sufficient to cover its obligations under 701.

SECTION 702 OBLIGATIONS

Mr. **COUGHLIN**. How much is unobligated in the Section 702 program?

Mr. **RILEY**. Can we get a number on that? I do not have a number on the unobligated balance for 702, it is not in front of me.

Mr. **COUGHLIN**. All right.

Mr. **RILEY**. I am instructed that we have obligated all of the money in the 702 program but that we have about $11.5 million that is unexpended. It is obligated but unexpended.

Mr. **COUGHLIN**. It is obligated?

Mr. **RILEY**. It is obligated, but unexpended. They are shaking their head yes, so that must be the truth.

Mr. **COUGHLIN**. Do you favor our taking that 702 money and transferring it to Amtrak?

Mr. **RILEY**. I think that would be inconsistent with the position that the Administration has taken on continued funding of Amtrak, so that we would not favor that. Also, we would need to get Conrail management's concurrence to do so since the funds are obligated.

EARMARKED RESEARCH PROJECTS

Mr. **COUGHLIN**. Would you explain your plans for implementing the Appropriations conferees directive to spend an additional $100,000 for research into corrosion and surge problems associated with tank car rupture disks, and $320,000 for the Oregon Graduate Center research into maintenance and repair of rail-related components?

[The information follows:]

The project to investigate tank car rupture disk problems is in the project definition stage. We will have the work underway later this year. Concerning the project for research at the Oregon Graduate Center, we are in the process of developing the basis for a grant or contract to the Oregon Graduate Center, and reviewing the long term implications of a grant or contract on our safety research program.

SECTION 701 FUNDING STATUS

Mr. **COUGHLIN**. Please update for the record section 701 funding status data found on pages 239 and 240 of last year's hearing record.

[Information follows:]

SECTION 701 FUNDING STATUS

The status of the authorization, appropriations, and obligations is as follows:

	Millions
Authorized	$270.0
Appropriated-fiscal year 1982	85.0
Appropriated-fiscal year 1983	20.0
Appropriated-fiscal year 1984	20.0
Appropriated-fiscal year 1984 supplemental	25.0
Appropriated-fiscal year 1985	15.0
Total appropriation	165.0
Transfer out	(23.0)
Deferral *	(4.6)
Total Appropriation Available for Section 701	137.4
Balance of authorization	105.0

*Note: The 1987 Budget Submission proposes transfer of $4,565,000, the remaining unobligated funds, to the Office of the Administrator to offset a reduction in Budget Authority for that year in support of the administration's deficit reduction efforts. This deferral is taken pending Congressional approval of this transfer.

Obligations (i.e. transfers to Railroad Retirement Board (RRB) as of March 15, 1986):

	Millions
Fiscal year 1982	$55.0
Fiscal year 1983	50.0
Fiscal year 1984	20.0
Fiscal year 1985	10.3
Fiscal year 1986	2.1
Total obligated	137.4

Of the $137.4 million transferred to the RRB for distribution, approximately $135.6 million has been paid in benefits and administrative expenses as of February 28, 1986, for the following purposes:

		Millions
(a)	Subsistence allowances	$71.8
(b)	Separation allowances	53.5
(c)	Health and Welfare	7.1
(d)	Moving Expenses	1.0
(e)	New Career Training	0.1
	Total	$133.5
RRB Administrative Expenses		$ 2.1
Total Benefits and Administrative Expenses		$135.6

Approximately 6,900 individual employees have received daily subsistence allowance payments since the program began in September 1981. Of this number, 1,780 claimants had received the maximum cumulative benefit of $20,000 as of March 14, 1986. In addition, 2,770 persons have received separation allowances of up to $20,000 under the 701 program.

LABOR PROTECTION UNOBLIGATED BALANCES

Mr. **Coughlin**. Please also update for the record the labor protection unobligated balances table found on page 240 of last year's hearing record.

[Information follows:]

Labor Protection Unobligated Balances

Unobligated balances for the Section 701, Section 702, Title V, and Rock Island labor protection programs are as follows:

Section 701 Labor Protection Program:	*Millions*
Authorized	$270.0
Appropriated	165.0
Balance of Authorization	105.0
Obligated (transferred to Railroad Retirement Board)	137.4
Transfer for Grant to National Railroad Passenger Corporation—Fiscal Year 1986	23.0
Fiscal Year 1986 Deferral Request	4.6
Unobligated Balance	0

Note.—The Railroad Retirement Board (RRB) keeps a working balance in its account which represents additional funds to FRA's unobligated balance.

Section 702 Conrail Workforce Reduction Program:	*Millions*
Appropriated funds	$100.0
Paid as of March 17, 1986	88.55
Balance	11.45

Title V Labor Protection Program

The fiscal year 1983 Appropriations Act reprogrammed $4 million from the Title V Program, leaving an unobligated balance of $500,000 available in FRA's account for transfer to the Railroad Retirement Board. The RRB continues to make payments of Title V claims that have been arbitrated. FY 1986 payments total $46,643 as of March 14, 1986.

Rock Island Labor Protection Program

The FRA transferred $35 million appropriated in FY 1984 to the Railroad Retirement Board on October 5, 1984. The Board has completed disbursement of $35 million in benefits.

FINANCIAL ASSISTANCE PROGRAM TERMINATIONS

Mr. **Coughlin**. You have requested no additional funding authority for the local rail service assistance program, the redeemable preference share program, or the section 511 loan guarantee program. Would you briefly explain your reasons for this?

[Information follows:]

LRSA funding has not been requested because most of the problems cause by major rail carrier abandonments, which the LRSA program was originally designed to correct, are local in nature and are appropriately the responsibility of state and local governments. Most states, with significant branchline issues have already established their own independently funded programs. In addition, many branchline problems are being solved without public assistance through the formation of shortline railroads. Increasingly, large railroads are actively marketing the transfer of marginal rail lines to shortline carriers.

With respect to sections 505 and 511, the problem of aiding the rehabilitation of major high-density mainline segments is behind us. Therefore, appropriation of new funds to assist rail system improvements cannot be justified. Also, many of the financial problems of the Northeastern and Midwestern railroads were ameliorated by the Staggers Act and various tax law changes. In light of the improved health of the rail industry and the availability of private sector loans, assistance to the railroads under sections 505 and 511 is no longer needed.

LRSA OBLIGATION/ALLOCATIONS

Mr. COUGHLIN. Please update for the record the LRSA obligation/allocation data on pages 227 through 230 of last year's hearing record by adding a table for fiscal year 1986. You may drop the 1984 table.

[Information follows:]

LRSA OBLIGATIONS/ALLOCATIONS

FISCAL YEAR 1985

STATE	ENTITLEMENT	PLANNING	REHABILI-TATION	RAIL FACILITY CONSTRUCTION	ACQUISITION	SUBSTITUTE SERVICE	TOTAL * OBLIGATIONS
ALABAMA	$ 114,121	$ 100,000	$336,770	$	$		$ 436,770
ALASKA	100,000	100,000					100,000
ARIZONA	50,000		125,000				125,000
ARKANSAS	100,000	100,000	178,987				278,987
CALIFORNIA	114,049		317,493				317,493
COLORADO	100,000	100,000					100,000
CONNECTICUT	100,000	100,000					100,000
DELAWARE	50,000**						-0-
DISTRICT OF COLUMBIA	50,000						-0-
FLORIDA	72,438					$44,900	44,900
GEORGIA	100,000	100,000	90,212				190,212
IDAHO	50,000						-0-
ILLINOIS	269,354		689,431				689,431
INDIANA	113,630	50,000	284,768				334,768
IOWA	352,869	100,000	722,408				822,408
KANSAS	87,424		87,424				87,424
KENTUCKY	65,692		42,305				42,305
LOUISIANA	100,000	100,000	56,104				156,104
MAINE	50,000		38,008				38,008
MARYLAND	50,000		175,000				175,000
MASSACHUSETTS	100,000	100,000					100,000
MICHIGAN	178,274	100,000					100,000
MINNESOTA	177,793	100,000					100,000
MISSISSIPPI	100,000	100,000					100,000
MISSOURI	113,157	100,000					100,000
MONTANA	86,003						-0-
NEBRASKA	100,000	100,000	78,153				178,153
NEVADA	100,000	100,000					100,000
NEW HAMPSHIRE	100,000	100,000					100,000
NEW JERSEY	100,000	100,000	343,770				443,770

273 a

NEW MEXICO	100,000	100,000					100,000
NEW YORK	100,000	100,000					100,000
NORTH CAROLINA	59,745	59,745	223,904				283,649
NORTH DAKOTA	68,623						-0-
OHIO	168,809	100,000	200,002				300,002
OKLAHOMA	126,989						-0-
OREGON	50,000	31,000					31,000
PENNSYLVANIA	175,968	100,000	428,459				528,459
RHODE ISLAND	50,000						-0-
SOUTH CAROLINA	50,000		175,000				175,000
SOUTH DAKOTA	52,347						-0-
TENNESSEE	69,078						-0-
TEXAS	159,342	100,000	518,854				618,854
UTAH	100,000	100,000					100,000
VERMONT	51,030	51,030					51,030
VIRGINIA	75,040	75,040	175,000**				250,040
WASHINGTON	98,225						-0-
WEST VIRGINIA	50,000						-0-
WISCONSIN	100,000	100,000	197,537				297,537
WYOMING	50,000						-0-
TOTAL	5,000,000	$2,666,815	$5,484,589	-0-	-0-	$44,900	$8,196,304

*Funds obligated from FY 1985 appropriation, remaining FY 1984 entitlements and reapportionments of deobligated entitlement funds.

**Delaware transferred its $50,000 entitlement to Virginia.

LRSA OBLIGATIONS/ALLOCATIONS

FISCAL YEAR 1986

STATE	ENTITLEMENT*	PLANNING	REHABILI-TATION	JAIL FACILITY CONSTRUCTION	ACQUISITION	SUBSTITUTE SERVICE	TOTAL ** OBLIGATIONS
ALABAMA	$ 100,000	$	$	$	$		$ -0-
ALASKA	100,000						-0-
ARIZONA	47,850		126,401				126,401
ARKANSAS	121,754						
CALIFORNIA	100,000		300,000				300,000
COLORADO	70,266						-0-
CONNECTICUT	47,850						-0-
DELAWARE	47,850						-0-
DISTRICT OF COLUMBIA	47,850						-0-
FLORIDA	100,000						-0-
GEORGIA	100,000		124,128				124,128
IDAHO	100,000		185,893				185,893
ILLINOIS	211,245						-0-
INDIANA	75,746						-0-
IOWA	237,926						-0-
KANSAS	89,296		300,000				300,000
KENTUCKY	47,850						-0-
LOUISIANA	100,000						-0-
MAINE	100,000						-0-
MARYLAND	47,850						-0-
MASSACHUSETTS	100,000		256,953				256,953
MICHIGAN	135,418		1,082,847				1,082,847
MINNESOTA	170,616		577,000				577,000
MISSISSIPPI	100,000		500,000				500,000
MISSOURI	107,641		677,510				677,510
MONTANA	100,000		250,000				250,000
NEBRASKA	132,811		300,000				300,000
NEVADA	100,000						-0-
NEW HAMPSHIRE	100,000						-0-
NEW JERSEY	100,000		374,640				374,640

273 c

NEW MEXICO	100,000						-0-
NEW YORK	100,000						-0-
NORTH CAROLINA	62,090						-0-
NORTH DAKOTA	100,000		668,623				668,623
OHIO	105,469						
OKLAHOMA	102,765		526,989				526,989
OREGON	49,000		219,000				219,000
PENNSYLVANIA	112,487		288,600				288,600
RHODE ISLAND	90,000						-0-
SOUTH CAROLINA	100,000		100,000				100,000
SOUTH DAKOTA	100,000		852,347				852,347
TENNESSEE	47,850						-0-
TEXAS	154,093		300,000				300,000
UTAH	100,000						-0-
VERMONT	47,850						-0-
VIRGINIA	77,875		100,000				100,000
WASHINGTON	100,000						-0-
WEST VIRGINIA	47,850		150,000				150,000
WISCONSIN	100,000						-0-
WYOMING	47,850						-0-
TOTAL	4,785,000	-0-	$8,260,931	-0-	-0-	-0-	$8,260,931

---

*The Gramm-Rudman-Hollings cut of 4.3% has reduced the total amount available for FY 1986 LRSA entitlements to $4,785,000. However, these funds have been proposed for rescission.

**Funds obligated from FY 1985 appropriation as of March 1, 1986.

273d

LRSA ENTITLEMENTS

Mr. COUGHLIN. Please also provide an update of fiscal year 1986 LRSA entitlement and mileage data similar to what appears on pages 231 through 233 of last year's hearing record.

[Information follows:]

274 a

Local Rail Service Assistance Program
Fiscal Year 1986 Entitlements

STATE	ELIGIBLE MILEAGE	PERCENTAGE	ENTITLEMENT
ALABAMA	496.37	2.09	$100,000
ALASKA	0.0	2.09	100,000
ARIZONA	68.16	1.00	47,850
ARKANSAS	635.67	2.54	121,754
CALIFORNIA	340.65	2.09	100,000
COLORADO	308.24	1.47	70,266
CONNECTICUT	43.90	1.00	47,850
DELAWARE	13.16	1.00	47,850
DISTRICT OF COLUMBIA	0.00	1.00	47,850
FLORIDA	416.47	2.09	100,000
GEORGIA	378.57	2.09	100,000
IDAHO	223.39	2.09	100,000
ILLINOIS	1,257.04	4.41	211,245
INDIANA	482.56	1.58	75,746
IOWA	1,362.32	4.97	237,926
KANSAS	513.54	1.87	89,296
KENTUCKY	207.80	1.00	47,850
LOUISIANA	435.66	2.09	100,000
MAINE	372.25	2.09	100,000
MARYLAND	40.84	1.00	47,850
MASSACHUSETTS	89.51	2.09	100,000
MICHIGAN	812.83	2.83	135,418
MINNESOTA	998.79	3.57	170,616
MISSISSIPPI	325.67	2.09	100,000
MISSOURI	708.76	2.25	107,641
MONTANA	499.52	2.09	100,000
NEBRASKA	840.33	2.78	132,811
NEVADA	52.51	2.09	100,000
NEW HAMPSHIRE	151.57	2.09	100,000
NEW JERSEY	277.70	2.09	100,000
NEW MEXICO	51.30	2.09	100,000
NEW YORK	193.43	2.09	100,000
NORTH CAROLINA	382.68	1.30	62,090
NORTH DAKOTA	313.85	2.09	100,000
OHIO	680.00	2.20	105,469
OKLAHOMA	550.72	2.15	102,765
OREGON	97.83	1.02	49,000
PENNSYLVANIA	706.84	2.35	112,487
RHODE ISLAND	5.10	1.88	90,000
SOUTH CAROLINA	166.32	2.09	100,000
SOUTH DAKOTA	443.76	2.09	100,000
TENNESSEE	301.97	1.00	47,850
TEXAS	823.10	3.22	154,095
UTAH	188.42	2.09	100,000
VERMONT	4.23	1.00	47,850
VIRGINIA	121.46	1.63	77,875
WASHINGTON	607.11	2.09	100,000
WEST VIRGINIA	246.91	1.00	47,850
WISCONSIN	396.45	2.09	100,000
WYOMING	33.90	1.00	47,850
TOTALS	18,669.16	100.00	$4,785,000*

*The total amount of $4,785,000 has been proposed for rescission.

LRSA OBLIGATIONS

Mr. Coughlin. Please also update the LRSA obligation data for fiscal year 1985 similar to what appears on pages 234 and 235 of last year's hearing record.

[Information follows:]

FISCAL YEAR 1985 ENTITLEMENTS
NOT OBLIGATED AS OF MARCH 1, 1986

STATE	FY 1985 ENTITLEMENT	AMOUNT OBLIGATED	FUNDS REMAINING
DISTRICT OF COLUMBIA	$ 50,000	$ -0-	$ 50,000
FLORIDA	72,438	44,900	27,538*
INDIANA	113,630	55,856	57,774
KENTUCKY	65,692	-0-	65,692
MAINE	128,284**	38,008	90,276*
NEW JERSEY	489,254***	100,000	389,254*
OHIO	168,809	100,000	68,808
PENNSYLVANIA	175,968	100,000	75,968
RHODE ISLAND	50,000	-0-	50,000
		TOTAL	$875,310****

*States have applied for the remaining funds which will be obligated very soon.

**A total of $78,284 became available in FY 1985 from the deobligation and reapportionment of previously obligated funds.

***A total of $389,254 became available in FY 1985 from the deobligation and reapportionment of previously obligated funds.

****An additional $7,656,840 is in the process of being deobligated and reapportioned to the States of California, Georgia, Louisiana, Maine, North Carolina, Ohio, Pennsylvania, Texas, West Virginia, and Wisconsin.

2756

LOCAL RAIL SERVICE ASSISTANCE FUNDS NOT OUTLAYED

FISCAL YEAR (MILLIONS)

STATE	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
AL	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$0.1	$0.2	$0.4
AK	-	-	-	-	-	-	-	-	-	0.1
AR	-	-	-	-	-	-	-	0.1	0.2	0.3
AZ	-	-	-	-	-	0.1	-	-	-	0.1
CA	-	-	-	-	-	-	-	-	0.1	0.6
CO	-	-	-	-	0.2	-	-	0.2	0.1	0.1
CT	0.2*	-	-	0.1*	0.1*	-	-	0.2	0.1	0.1
DC	-	-	-	-	-	-	-	0.1	-	-
DE	0.6*	-	-	-	-	-	-	-	-	-
FL	-	-	-	-	-	-	-	-	-	-
GA	-	-	-	-	-	-	-	-	-	0.1
IA	-	-	-	-	-	-	0.1	-	1.6	0.8
ID	-	-	-	-	-	0.1	-	0.2	0.1	0.2
IL	-	-	-	-	-	-	-	-	-	-
IN	-	-	-	-	0.6	0.1	-	-	-	0.3
KS	-	-	-	-	-	-	-	-	-	0.4
KY	-	-	-	-	-	0.4	-	-	-	0.1
LA	-	-	-	-	0.1	-	0.3	0.1	0.2	0.2
MA	-	-	-	-	-	-	-	0.1	0.3	0.3
MD	-	-	-	-	-	-	-	0.1	-	0.2
ME	-	-	-	-	-	-	-	-	-	0.1
MI	-	-	-	-	-	-	-	0.1	-	-
MN	-	-	-	-	0.9	0.2	0.6	0.1	0.1	0.6
MO	-	-	-	-	-	0.6	0.3	0.1	0.1	0.7
MS	-	-	-	-	-	-	-	-	-	0.6
MT	-	-	-	-	-	-	-	-	-	0.3
NC	-	-	-	-	0.4	0.3	-	-	-	0.2
ND	-	-	-	-	-	-	-	-	0.1	0.7
NE	-	-	-	-	-	-	-	-	-	0.4
NH	0.4*	-	-	0.2*	0.3*	-	-	-	-	-
NJ	-	-	-	-	0.1	0.1	-	0.1	-	0.8
NM	-	-	-	-	-	-	0.2	-	0.3	0.1
NV	-	-	-	-	-	-	0.3	0.2	0.1	0.1
NY	-	-	-	0.8	0.3	0.8	0.2	0.1	0.2	0.5
OH	-	-	-	0.4	0.3	0.6	0.2	0.2	0.3	0.2
OK	-	-	-	-	-	-	0.1	-	-	0.5
OR	-	-	-	-	-	-	-	-	0.1	0.2
PA	-	-	-	3.0	-	0.2	-	0.3	0.1	0.8
RI	-	0.2	0.3	0.1	-	0.1	-	0.4	0.2	-
SC	-	-	-	-	-	-		-	0.1	0.2
SD	-	-	-	-	-	-	-	0.1	-	0.9
TN	-	-	-	-	-	-	-	-	-	-
TX	-	-	-	-	-	0.8	-	-	0.8	0.6
UT	-	-	-	-	-	-	-	-	0.1	0.1
VA	-	-	-	-	-	-	-	-	-	-
VT	-	-	-	-	-	-	-	-	-	0.1
WA	-	-	-	-	0.2	-	0.1	0.1	-	-
WI	-	-	-	0.3	0.5	0.1	0.1	0.1	0.2	0.3
WV	-	-	-	-	-	-	-	-	0.2	-
WY	-	-	-	-	-	-	-	-	-	-
TOTAL	$1.2	$0.2	$0.3	$4.9	$4.0	$4.5	$2.5	$3.1	$5.9	$13.3

*Pending Litigation

LRSA DISCRETIONARY GRANTS

Mr. Coughlin. Please also provide for the record a breakdown of fiscal year 1985 and fiscal year 1986 to date for LRSA discretionary grants similar to what appears on page 236 of last year's hearing record.

[Information follows:]

276 a

FISCAL YEAR 1985 DISCRETIONARY GRANTS

STATE	PROJECT	AMOUNT
Illinois	Rehabilitation of 10.5 mile Milan Branch which is operated by Iowa Interstate Railroad	$420,077
	TOTAL	$420,077

FISCAL YEAR 1986 DISCRETIONARY GRANTS

STATE	PROJECT	AMOUNT
Arizona	Rehabilitation of 29.4 miles of San Manuel Railroad between Hayden and San Manuel	$ 75,000
California	Rehabilitation of 49 miles of Sierra Railroad between Oakdale and Standard	300,000
Georgia	Rehabilitation of 15 miles of Seaboard System from McCoysville to Blue Ridge and Murphy Junction to Mineral Bluff	124,128
Idaho	Rehabilitation of St. Maries River Railroad between St. Maries, Plummer, and Bovill Junction	185,893
Kansas	Rehabilitation of 12 miles of Oklahoma-Kansas-Texas Railway between Riverdale and Wellington	300,000
Massachusetts	Rehabilitation of 4.9 miles of Boston & Maine's Danvers Branch, including Waters Bridge	243,953
Michigan	Rehabilitation of 79 miles of Tuscola & Saginaw Bay Railroad between Ashley and Marion	500,000
Minnesota	Rehabilitation of 94 mile Madison to Hanley Falls line	469,523
Mississippi	Rehabilitation of 9 miles of Columbus & Greenville Railway between Mathiston and Stoneville	500,000
Missouri	Rehabilitation of 10.7 miles of Missouri-Kansas-Texas Railroad between LaDue and Appleton City	300,000
Montana	Reinstallation of 4.5 miles of track and construction of connection between Moore and Sipple	250,000
Nebraska	Rehabilitation of 12 miles of Chicago & North Western track between Stuart and Long Pine	300,000

276c

New York	Rehabilitation of 7.3 miles of Dansville and Mt. Morris Railroad between Dansville and Groveland	472,500
North Dakota	Rehabilitation of 19.6 miles of Soo Line between Wishek and Ashley	600,000
Oklahoma	Rehabilitation of 26.2 miles of Oklahoma-Kansas-Texas Railroad between Addington and Texas border	400,000
Oregon	Rehabilitation of 3.5 miles of City of Prineville Railway in Prineville	200,000
Pennsylvania	Emergency repair of 22.3 miles of Scranton to Carbondale line	288,600
South Carolina	Rehabilitation of 11.7 mile Greenville Northern Railway between Greenville and Travelers Rest	100,000
South Dakota	Rehabilitation of 128 mile State-owned Mitchell to Aberdeen line	800,000
Texas	Rehabilitation of bridges on 31.6 mile Border Pacific Railroad between Mission and Rio Grande City	300,000
Virginia	Rehabilitation of Eastern Shore Railroad between Pocomoke, Maryland and Norfolk, Virginia	100,000
West Virginia	Rehabilitation of 4.5 miles of South Branch Valley Railroad between Green Spring and Petersburg	100,000
	TOTAL	$6,909,597

Mr. Coughlin. Please also provide for the record a breakdown of fiscal year 1986 LRSA discretionary grant applications similar to what appears on pages 236 and 237 of last year's hearing record.

[Information follows:]

PENDING FISCAL YEAR 1986 DISCRETIONARY APPLICATIONS

State	Project	Amount
Florida	Rehabilitation of Atlanta & St. Andrews Bay Railroad to accommodate transport of personnel and equipment for a military exercise.	$130,000
Louisiana	Rehabilitation and consolidation of track in City of Gretna	630,200
Oregon	Emergency repair of flood damage on county owned Nevada-California-Oregon railroad	139,715
Total		$899,915

STATES IN PROCESS OF SUBMITTING FY 1986 DISCRETIONARY APPLICATIONS

State	Project	Amount
Mississippi	Continued rehabilitation of Rosedale to Metcalf line which is owned by the Bolivar Port District.	$500,000
	Continued rehabilitation of Columbus & Greenville Railway	700,000
	Rehabilitation of Gulf & Mississippi Railroad	1,000,000
	Rehabilitation of yards serving Meridian to Shreveport line which is being purchased from the Illinois Central Gulf by Mid-South Railway.	1,000,000
New Jersey	Acquisition and rehabilitation of track in Cumberland County which Conrail is abandoning	5,600,000
	Continued rehabilitation on Delaware & Otsego	1,285,000
Total		$10,085,000

REDEEMABLE PREFERENCE SHARE EARMARKED PROJECTS

Mr. Coughlin. As you know, the Appropriations conferees earmarked the following projects from the $35.5 million provided for redeemable preference shares in fiscal year 1986. The Columbus and Greenville Railroad is $1.9 million; the Gulf and Mississippi Railroad is $8 million; the Miami commuter railroad is $12.5 million; the Ann Arbor Railroad is $2.6 million; the Bangor and Aroostook Railroad is $3 million; and the Chicago and North Western Railroad is $5.5 million.

Would you review each project for us in terms of status of applications and necessary administrative reviews?

And also tell us when you would expect to obligate these funds assuming all impediments to their availability, such as the proposed rescissions, are removed?

Mr. Riley. We have not received applications from any of the—or at least as of yesterday morning have not received any applications from any of the five carriers.

We have, however received materials and have had pre-application discussions with three of them—Bangor and Aroostook and Gulf and Mississippi and the Florida commuter project. In fact, I met with the Florida commuter people last week.

The Bangor and Aroostook has a special problem in that their project is being held up by an environmental impact statement. But we have not heard from the other two carriers. Now, as the

Committee well knows, a problem was created for both of us and my counsel, who is seated to my right, advised me that inspection of the language included in the conference report, a question was raised as to our ability to legally transfer these funds.

As you know there is a rescission pending against this now, and I believe that rescission would expire if not acted on by April 15.

We have authored a letter to the Comptroller General asking the Comptroller General to give us an interpretation on whether the language included in the appropriations bill would, in fact, be sufficient to allow us to receive and process these grants.

In light of the fact that this Committee must make a decision on a rescission, of course, if you support the position on the rescission, that ends the issue. If the Committee does not support the position on the rescission, we have asked the Comptroller General to respond to us on the language before the 15th of April so that we would be in a position to act.

REDEEMABLE PREFERENCE SHARE OBLIGATIONS

Mr. COUGHLIN. If these various impediments are removed, are you in a position to obligate these funds by the end of the year?

Mr. RILEY. If all of the impediments were resolved and if the Committee did not act on the rescission, and if, in fact, the language were construed to permit us to go ahead, we will move ahead as rapidly as the applicants can move with us.

We have no intention of not acting on these, if, in fact, the rescission is not approved and if the construction of the language favors such action.

What we have told the parties is that we will continue to work with them, receive their data, refine their applications as we would in any other case. And we are, in fact, doing that now.

REDEEMABLE PREFERENCE SHARE PROJECT SUMMARY

Mr. COUGHLIN. Please provide for the record a status report on each section 505 project earmarked by Congress similar to what appears on pages 273 through 275 of last year's hearing record.

[Information follows:]

280a

PREFERENCE SHARE PROJECTS DESIGNATED BY CONGRESSIONAL ACTION
($ MILLIONS)

FY 1980

Not less than $38.0	Purchase, lease, or rehabilitation of Rock Island properties by noncarrier entities. Rock Island Railroad Transition and Employee Assistance Act--section 112. $25.0 obligated to Oklahoma, Kansas, and Texas Rail Users Association under agreement dated October 20, 1982; $18.0 obligated to Mid-States Port Authority (Kansas) under agreement dated February 29, 1984; $3.4 obligated to INRC, Inc., (Iowa Northern) under agreement dated July 20, 1984; $6.2 million obligated to Heartland Rail Corporation under agreement dated September 30, 1985.

FY 1981

$30.0	Miles City Line of Milwaukee Road. Conference Report--House--No. 97-124 dated June 3, 1981--accompanying FY 81 Supplemental Appropriations Act. $30.0 obligated to State of South Dakota under agreement dated May 26, 1982.
3.0	Feeder lines. Earmarked under section 405 of the Staggers Rail Act of 1980; cancelled by section 403 of the Rail Safety and Service Improvement Act of 1982.

FY 1982

$60.5	Conference Report--House--No. 97-331 dated November 13, 1981--accompanying FY 82 Appropriations Act, as follows:

Amount	Project	Status
$20.0 1/	East St. Louis	The Terminal Railroad Association of St. Louis voted to discontinue efforts to develop a proposal for section 505 funding.
11.0	Oklahoma, Kansas, and Texas Rail Users Association	Agreement providing $25.0 million in preference share funding to OKT executed on October 20, 1982.

15.0	Grain Route (KC-Twin Cities)	Agreement providing $15.0 million in section 505 funding to Chicago and North Western Transportation Company executed as of December 19, 1983.
6.0	Milwaukee Road	Agreement providing $6 million in section 505 funding to Trustee of Milwaukee executed on May 14, 1984.
5.0	Armourdale Yard - Kansas City	Agreement providing $5.0 million in preference share funding to St. Louis Southwestern Railway Company executed on November 24, 1982.
3.5	Other Meritorious Projects	Used to fund other meritorious applications.

FY 1982 (continued)

1/ Additional $20.0 million designated for East St. Louis Gateway Project in Senate Report No. 97-516 dated August 3, 1982--accompanying FY 82 Supplemental Appropriations Act. Also, the Rail Safety and Service Improvement Act of 1982 reserved for the East St. Louis project $40 million of the funds appropriated for fiscal years 1983-1985 under the section 509 authorization for the preference share program.

FY 1983

$ 5.0 Conference Report--House--No. 97-960 dated December 13, 1982--accompanying FY 83 Appropriations Act, as follows:

Amount	Project	Status
$3.0 2/	Bloomer Shippers Railway Redevelopment League	Agreement providing $3 million as conditional grant to Bloomer League executed on March 12, 1984.
2.0	Rock Island Lines - Iowa	Agreement providing $3.4 million to INRC, Inc., (Iowa Northern) executed on July 20, 1984.

2/ Section 511 of the Rail Safety and Service Improvement Act of 1982 authorized $3 million to be appropriated for the Bloomer Line; source of funding not specified. The Department's FY 1984 Appropriations Act (P.L. 98-78 dated August 15, 1983) appropriated $3 million as a conditional grant for the Bloomer Line to be derived by transfer from unobligated balances of redeemable preference shares. The conditional grant funding for the Bloomer Line also was included in the Conference Report accompanying the FY 1984 Appropriations Act--House No. 98-318 dated July 26, 1983.

FY 1983 (continued)

$ 3.4 Detroit & Mackinac Railway. Conference Report accompanying the Department's FY 1984 Appropriations Act--House--No. 98-318 dated July 26, 1983. Agreement providing $3.42 million in section 505 funding to Detroit & Mackinac executed on September 30, 1985.

Note: The Department's FY 1983 Appropriations Act transferred to other programs a total of $25.0 million in available preference share funds: $10.0 million to Conrail Labor Protection and $15.0 million to Commuter Rail Service. No recommendations were made with respect to offsets in specific preference share projects.

FY 1984

- Conference Report accompanying Department's FY 1984 Supplemental Appropriations--House--No. 98-551 dated November 15, 1983. Conferees urged FRA to give priority consideration to the redeemable preference share (section 505) project applications of the Erie Lackawanna (Monroe County Railroad Authority) and the New York, Susquehanna and Western Railroads (Delaware Otsego Corporation) to the extent that such projects can be funded from surpluses derived from existing projects for which preference shares have been reserved. No specific sources or amounts were specified. An agreement providing $4.1 million in section 505 funding to the New York, Susquehanna and Western Railway Corporation was executed on September 30, 1985. The proponents of the Monroe County proposal have not pursued their undertaking for some time.

280d

FY 1986

- Conference Report No. 99-450 accompanying the FY 1986 Appropriations Act as contained in the 1986 Continuing Resolution, P.L. 99-190.

Amount	Project	Status
$ 1.9	Columbus and Greenville Railroad	No applications have been received for the projects for which $33.5 million in section 505 was appropriated and designated in the FY 1986 Continuing Resolution. The statutory authority to obligate section 505 funds expired on September 30, 1985. The President's FY 1987 Budget includes Gramm-Rudman-Hollings Act reductions of 4.3 percent totaling $1.441 million for these projects and a proposal that the remaining $32.059 million of section 505 funds appropriated in FY 1986 be rescinded. A request has been submitted to the Comptroller General for a legal opinion on the Secretary's authority to obtain appropriated funds for obligation under the section 505 program.
8.0	Gulf and Mississippi Railroad	
12.5	Miami Commuter Rail	
2.6	Ann Arbor Railroad	
3.0	Bangor and Aroostook Railroad	
5.5	Chicago and North Western Railroad	
$33.5	Total	

The Conference Report accompanying the FY 1986 Continuing Resolution included language in both the LRSA and section 505 sections for FRA to give priority consideration to "a railroad rehabilitation project in Massachusetts and Vermont." No funding was earmarked for this project. FRA understands that the project being referred to would provide for a connection allowing Amtrak's "Montrealer" to move on Central of Vermont track instead of the Boston and Maine in Massachusetts north of Springfield, to provide a faster route on better track. FRA has not received an application for this project from any of the states or railroads involved.

2860

The Conference Report also urged priority consideration (no designated funding) for rehabilitation of a Delaware Otsego system line between Warwick, New York and Butler, New Jersey. The DO has requested that $1.5 million of the $4.1 million of section 505 funds to be provided under the DO/NYS&W/ FRA Financing Agreement of September 30, 1985, be reprogrammed for the rehabilitation of the Warwick-Butler line. FRA is working closely with DO in examining the feasibility of the reprogramming and possibly satisfying DO's needs from this source.

Further, the Conference Report recommends that priority consideration be given to the additional needs of the Tri-County Rail project for a station connection with the Dade County metro-rail for not to exceed $4.0 million. Also, it is the intent of the conferees that Federal Highway Administration "maintenance of traffic" funding shall be available for the operation of the Tri-County commuter rail project.

SECTION 511 COMMITMENTS

Mr. COUGHLIN. Please also provide for the record a listing of fiscal year 1985 and 1986 section 511 new loan guarantee commitments that you have entered into.

[Information follows:]

During fiscal year 1985, FRA committed a total of $2.5 million in guarantees of loans under section 511. The entire amount of this assistance was provided to the Delta Transportation Company, a wholly owned subsidiary of the Columbus and Greenville Railway Company, to be applied toward the purchase of 63.9 route miles of Illinois Central Gulf rail lines in western Mississippi. No commitments to guarantee new loans have been made to date in fiscal year 1986.

SECTION 505 AND 511 APPLICATIONS

Mr. COUGHLIN. Please also provide for the record a breakdown of all section 505 and 511 pending applications similar to what appears on pages 277 through 279 of last year's hearing record.

[Information follows:]

There are no pending applications for sections 505 and 511 funding at this time.

FRA has received preliminary section 505 submission from the Gulf and Mississippi Railroad for the rehabilitation of track in eastern Mississippi and from the Bangor and Aroostook Railroad to upgrade existing track and yard facilities in order to adequately serve the proposed Sears Island Cargo Port Project in Maine. Also, the Inter-Rail Express Corporation has filed a preliminary submission under section 511 for the purpose of refrigerated RoadRailer Vehicles to be used in a new service venture involving the movement of perishables between Florida and New York City.

FINANCIAL ASSISTANCE ANNUAL REPORT

Mr. COUGHLIN. Please also provide for the record a copy of your latest report prepared pursuant to section 409 of the Staggers Act.

[Information follows:]

U.S. Department
of Transportation
Federal Railroad
Administration

Annual Report on Railroad Financial Assistance Under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 and Section 3 of the Emergency Rail Services Act of 1970

Office of Freight Services
Washington, D.C. 20590

DOT/FRA/RPF

March 1986

FISCAL YEAR 1985

ANNUAL REPORT ON RAILROAD FINANCIAL ASSISTANCE UNDER TITLE V OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 AND SECTION 3 OF THE EMERGENCY RAIL SERVICES ACT OF 1970

CONTENTS

PAGE

STATUTORY REQUIREMENTS 1

TITLE V 1

FINANCIAL CONDITION AND OPERATIONS 2

  Railroad Rehabilitation and Improvement Fund 3

  Obligation (Loan) Guarantee Fund 5

FINANCING SUMMARY 6

  Program to Date. 6

  Fiscal Year 1985 6

  Fiscal Year 1986 8

EMERGENCY RAIL SERVICES ACT OF 1970 8

  Milwaukee Road 9

FISCAL YEAR 1985

ANNUAL REPORT ON RAILROAD FINANCIAL ASSISTANCE UNDER TITLE V OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 AND SECTION 3 OF THE EMERGENCY RAIL SERVICES ACT OF 1970

STATUTORY REQUIREMENTS

This report responds to the requirements of section 409 of the Staggers Rail Act of 1980, 49 U.S.C. 1654a, for an annual report by the Secretary of Transportation on:

- The past and anticipated financial condition and operations during the fiscal year of the Railroad Rehabilitation and Improvement Fund (Fund) and the loan guarantee fund established under sections 502(a) and 511(b), respectively, of Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act);

- The Federal assistance provided to the railroad industry during the fiscal year, setting forth the reasons for the assistance and the way in which such assistance contributed to the overall goal of providing a safe and efficient transportation system; and

- The financial condition of railroads that have outstanding loans guaranteed under the Emergency Rail Services Act of 1970 (ERSA)--which, in this report, includes information relating to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) and its assignee, Milwaukee Road Inc., a wholly owned subsidiary of the Soo Line Corporation (Soo). The "Soo" will refer to both the parent company and the subsidiary.

TITLE V

The Fund and the loan guarantee fund are means to carry out the provisions of two programs under which the Secretary may provide railroad financial assistance. One program (section 505 of the 4R Act) involves funding through the purchase of securities, either debt or equity, issued by railroads, trustees of bankrupt carriers, government entities and other eligible applicants. The second program (section 511 of the 4R Act) is in the form of loan guarantees.

The powers and duties of the Secretary under Title V have been delegated to the Administrator of the Federal Railroad Administration (FRA), except for those powers contained in section 506(c) that provide for interim appointments to the Boards of Directors of recipients of section 505 assistance when dividend/interest or redemption/principal payments on issued securities remain unpaid for four months.

FRA may purchase securities pursuant to section 505 with the proceeds of Fund anticipation notes sold to the Treasury. Section 507 of the 4R Act directs the Treasury to purchase those notes to the extent of appropriated funds until September 30, 1985, in an amount not to exceed $1.4 billion.1/ A total of $591.2 million--net after rescissions and transfers--was appropriated through fiscal year 1985 for the section 505 program (Exhibit 1). All appropriated funds were used by the Treasury to purchase Fund anticipation notes.

Section 511(e) of the 4R Act provides that the aggregate unpaid principal amounts of loans guaranteed by FRA under section 511 may reach, but not exceed, $1 billion at any one time. Under section 512(a) of the 4R Act, however, FRA is permitted to issue notes to cover defaults on guaranteed loans only up to the amounts provided in appropriation acts. A total of $600 million, available without time limitation but subject to annual ceilings enacted through the appropriations process, was provided through fiscal year 1985 to fund notes issued by FRA to the Treasury to cover defaults. Of this amount, FRA guaranteed obligations in the aggregate principal amount of $271.0 million (Exhibit 1).

The ceiling for new loan guarantees during fiscal year 1985 was $6.5 million, of which FRA guaranteed obligations in the amount of $2.5 million. For fiscal year 1986, the ceiling is $4.0 million.

FINANCIAL CONDITION AND OPERATIONS OF THE FUND AND THE LOAN GUARANTEE FUND

Exhibits 2 and 3 present the financial status of the Fund and the loan guarantee fund, respectively, as of September 30, 1985. The following comments relate to the operations of the Fund and the loan guarantee fund, and also include summaries of the principal transactions.

1/ Not more than $55 million was authorized to be appropriated for fiscal years 1983, 1984, and 1985.

THE FUND

Section 502(a) of the 4R Act established the Fund in the Treasury: ". . . in order (1) to secure the payment, when due, of the principal of, any redemption premium on, and any interest on, all Fund anticipation notes and Fund bonds, by a first pledge of and a lien on all revenues payable to and assets held in the Fund, and (2) to carry out the purposes, functions, and powers authorized in this title."

Assets of the Fund consist of:

- The proceeds of the sale of Fund anticipation notes by the Administrator to the Secretary of the Treasury;
- Deposits in the Fund of securities purchased by the Administrator pursuant to section 505;
- Dividend/interest and redemption/principal payments on such securities;
- Those sums as may be appropriated to the Fund by the Congress;
- Any security provided to secure obligations; and
- Income and gains from investment of excess funds, if any, in the Fund.

Through September 30, 1985, FRA had issued and sold to the Treasury 20 Fund anticipation notes in the total principal amount of $599.2 million. Of this amount, FRA had drawn down and deposited into the Fund $551.0 million, all of which was immediately used to provide project funds to recipients under executed financing agreements. The funding was provided to recipients through the purchase and deposit in the Fund of 40,130 equity securities and 9,233 debt securities at an initial par value of $10,000 each; advances in the amount of $49.1 million against trustee certificates; $5.4 million transferred to the Interstate Commerce Commission (ICC) to finance directed service orders; and $2.9 million transferred and provided as a conditional grant.

During fiscal year 1985, the Administrator accepted the Columbus and Greenville Railway Company's (C&G) tender offer to purchase from the Administrator, at present value, all of the outstanding equity securities (844 shares) previously purchased from the C&G by the Administrator under section 505 agreements with the C&G dated October 18, 1977, and November 10, 1981, and held in the Fund. C&G's payments under the tender offer and the return of the securities to the C&G terminated those agreements.

Also settled in fiscal year 1985, as set forth more fully in a subsequent section of this report, were the section 505 and other obligations of the Milwaukee estate to the United States. Milwaukee equity securities (913 shares) and trustee certificates ($47.6 original principal value) held in the Fund were replaced by a note of the Soo following agreement for the Soo's assumption of the Milwaukee obligations in satisfaction of United States' claims in the Milwaukee reorganization proceeding.

The total principal amount of Milwaukee obligations assumed by the Soo was $155.7 million. The Soo has since paid in full $86.9 million and $68.8 million remains to be paid with interest.

Projected activities during fiscal year 1986 include deposits into the Fund of $12.0 million in advances against Fund anticipation notes for funding previously appropriated and obligated under executed financing agreements but not yet received by recipients, and $0.2 million in repayments of principal due for financing provided through the Fund. Disbursements from the Fund to recipients of $12.0 million for project work also are projected.

In keeping with section 507(b) of the 4R Act, each Fund anticipation note issued to the Treasury bears a maturity date not later than seven (7) years from the date of issuance. Under the terms and conditions of each note, the principal amount is payable only if, when, and to the extent the FRA receives payments on the securities purchased pursuant to the financing agreement executed with the issuer of the securities. During fiscal year 1985, a total of $4.3 million in principal repayments from section 505 financing recipients was remitted to the Treasury.

Each advance against a Fund anticipation note bears interest at a rate that reflects the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the term of the securities purchased pursuant to section 505.

Interest on the Fund anticipation notes is due semiannually. Interest is payable, however, only to the extent funds are available as a result of (1) sums appropriated to the Fund specifically for the payment of interest, or (2) dividends or interest received on any securities purchased with the proceeds of a note. Dividends and interest on the securities are subject to a 10-year statutory payment moratorium. As of September 30, 1985, and, for fiscal year 1986, no monies for the payment of interest on Fund anticipation notes were available or are anticipated to become available to the Fund. No payment of interest was made or is anticipated.

LOAN GUARANTEE FUND

Section 511(b) of the 4R Act provides that the loan guarantee fund be administered as a revolving fund. Two sources of revenue are provided for that fund. First, charges are assessed for investigating applications. These charges are not to exceed one-half of 1 percent of the principal amount of the obligation. Second, annual premium charges are mandated. These charges are not to exceed an annual rate of 1 percent on the unpaid principal balance. The premium charges are assessed upon execution of the guarantee and are paid thereafter on the anniversary date of such guarantee during the life of the guarantee.1/

If the balance of the loan guarantee fund is not sufficient to pay required amounts because of defaults, FRA is authorized to issue promissory notes or other obligations to the Treasury.

Through September 30, 1985, total deposits in the loan guarantee fund amounted to $4,766,051.88. These deposits included investigation fees, premium charges, and interest income from investments of fund assets. Available deposits were invested in one-year obligations of the United States; matured investments were reinvested in similar securities.

In fiscal year 1982, the assets of the loan guarantee fund ($3.5 million) were used together with the proceeds of notes ($7.0 million) to the Secretary of the Treasury to satisfy the Administrator's responsibility with respect to the failure by the Delaware and Hudson Railway company (D&H) to make a total of $10.5 million in payments due the Federal Financing Bank (FFB) for assistance provided under section 511. In consideration thereof, the FFB assigned the D&H notes to FRA. In an agreement of December 19, 1983, pursuant to the provisions of section 1164(c) of the Northeast Rail Service Act of 1981, the Administrator, in behalf of the total United States interest, limited the D&H debt held by FRA ($12.4 million) and the United States Railway Association ($63.2 million) and provided for the issuance of contingency notes in substitution for such debt. The contingency notes in those amounts are held by FRA.

The balance in the loan guarantee fund as of September 30, 1985, was $1,244,505.03. Expected activities in fiscal year 1986 include deposits of $185,000 in investigation fees, premium charges, and interest income and investment of available funds in obligations of the United States. Also, on

---

1/ The investigation charge has been established at one-eighth of 1 percent, and the annual premium charge has been established at two-tenths of 1 percent.

December 24, 1985, use of the loan guarantee fund assets was required under the Administrator's agreements with the Soo and the FFB to satisfy prepayment penalties resulting from the Soo's satisfaction on that date of amounts due the FFB for Milwaukee obligations assumed by the Soo.

FINANCING SUMMARY

Program to Date

Exhibit 4 presents a schedule of the agreements executed under Title V through September 30, 1985--a total of 29 agreements committing $589.5 million in section 505 assistance (excluding $3.0 million transferred and provided as a conditional grant), and 12 guarantees of loans under section 511 aggregating $271.0 million. While the section 505 assistance has been directed principally towards rehabilitation for the purpose of eliminating deferred maintenance on high density main lines, the program also has served the needs of smaller railroads. The guarantee financing has been used mainly to support critical freight car and locomotive rehabilitation programs, track upgrading projects, and the funding of labor protection payments to former employees of the Milwaukee.

Fiscal Year 1985

During fiscal year 1985, FRA committed a total of $16.77 million in project assistance utilizing section 505 funds and $2.50 million in guarantees of loans under section 511, as follows:

	($ Millions)	
Recipient	Section 505	Section 511
Delta Transportation Company (DTC)/ Columbus & Greenville Railway (C&G)	$ 0.65	$2.50
New York, Susquehanna and Western Railway Corporation (NYS&W)/ Delaware Otsego Corporation (DO)	4.10	
Detroit & Mackinac Railway Company (D&M)	3.42	
Heartland Rail Corporation (Heartland)/Iowa Interstate Railroad	6.20	
Michigan Interstate Railway Company (MIRC)	2.40	
Total	$16.77	$ 2.50

The sections 505/511 assistance ($3.15 million) provided to DTC, a wholly owned subsidiary of the C&G, was used by DTC to purchase from the Illinois Central Gulf Railroad Company (ICG) 63.9 route miles of rail lines in western Mississippi. Service on the lines was proposed to be withdrawn by the ICG. The C&G, which is the contract operator of the acquired property, has other connections with the ICG as well as with the Norfolk-Southern and Burlington Northern (Frisco) and serves as a feeder line to these larger systems. Over the last several years, the C&G has incurred operating losses. Purchase of the western Mississippi lines with the sections 505/511 assistance is projected to strengthen the railroad's long-term viability and enable the C&G to continue to serve users on both the acquired property and its previously existing system.

In the Conference Report accompanying the Department's Fiscal Year 1984 Supplemental Appropriations Act, FRA was urged to give priority consideration, to the extent funds were available, to the section 505 project application of the NYS&W--the principal operating subsidiary of the DO. The project for which $4.1 million in section 505 funds was approved involves the rehabilitation of several key elements of the NYS&W in central and southern New York State and northern New Jersey to permit the continuation of competitive freight services. Supplemental funding of $2.5 million from the States of New York and New Jersey and $0.2 million from the railroad is to be provided for a total project of $6.8 million. The combined funding will allow for improvements to the DO/NYS&W's operating system so as to maintain existing operations and accommodate anticipated service growth.

The $3.42 million of section 505 assistance for the D&M will finance the rehabilitation of a 114-mile segment of the railroad's easterly main line between Bay City and Alpena, Michigan. The purpose of the project is to contribute to the safe operation of the D&M and enable the D&M to maintain essential freight service in a geographic area where no other rail carrier operates and where the existing limited highway system creates a need for reliable rail transportation. The Congress designated $3.42 million for the D&M in the Conference Report accompanying the Department's Fiscal Year 1984 Appropriations Act. The State of Michigan also has provided financial support to continue rail freight service in the region served by the D&M.

The Heartland project ($6.2 million of section 505 funds) covers the rehabilitation of major segments in Iowa of the former Rock Island main line between Bureau, Illinois and Council Bluffs, Iowa purchased by Heartland--a shipper-owned, noncarrier entity. The Iowa Interstate Railroad, Ltd. is

Heartland's operator. The purpose of the track rehabilitation is to achieve savings in car time, locomotive hours, and train and enginemen wages--and to accelerate the realization of these savings to improve operations. The line to be rehabilitated is used for the movement of steel and scrap, coal and farm products and serves as a link for manufactured products produced on-line and destined for off-line points via Chicago and Omaha. Heartland's program for the acquisition and rehabilitation of the line has been supported by contributions from the States of Iowa and Illinois and from interested shippers.

MIRC will receive $2.4 million in section 505 funding, to be supplemented with $0.5 million in assistance from the State of Michigan, for the rehabilitation of its 47.5-mile line between Toledo, Ohio and Ann Arbor, Michigan. The rehabilitation project is being undertaken to enable MIRC to provide essential freight services on the Toledo-Ann Arbor segment--which in a 1981 Michigan DOT study ranked second in the State on a service index of lines defined as essential core railroads. The track improvements will eliminate existing speed restrictions to permit more efficient operations. Additionally, MIRC projects that the rehabilitated track and a $1.25 million state-funded rehabilitation project on the state-owned line segment immediately north of Ann Arbor will enable the railroad to serve new traffic.

Fiscal Year 1986

The statutory authority to obligate section 505 funds expired on September 30, 1985. However, the section 505 agreements executed in fiscal year 1985 will support fiscal year 1986 track rehabilitation work in Iowa, New York, New Jersey and Michigan.

There is no statutory termination date for the section 511 loan guarantee program. New loans may be guaranteed under the $4.0 million ceiling established for section 511 assistance during fiscal year 1986.

EMERGENCY RAIL SERVICES ACT OF 1970

Subject to annual limitations, ERSA authorizes the Secretary, after consulting with the ICC, to guarantee at any one time up to $200 million of certificates issued by the trustees of railroads undergoing reorganization to provide working capital for continuation of essential transportation services threatened by imminent cessation. The Secretary's authority has been delegated to the Administrator. No ERSA guarantees were provided for in the fiscal year 1985 appropriations act; none are provided for in fiscal year 1986. Information relating to earlier ERSA and Title V loans to the Milwaukee follows.

Milwaukee Road

As a result of actions completed during fiscal year 1985, all outstanding ERSA and Title V claims of the United States in the Milwaukee reorganization proceeding were settled; the liability for the Milwaukee debt was assumed by the Soo; and the original agreements with the Milwaukee and/or the Trustee were satisfied and terminated.

On February 19, 1985, the Milwaukee's Reorganization Court approved the sale of the core railroad operating assets to the Soo and the Trustee of the Milwaukee closed the sale to the Soo on that same day. Those assets not used or held for use in operating the core system remained with the estate.

As part of the consideration for the acquisition of the core assets, the Court directed the Trustee to assign to the Soo the liability of the estate with respect to outstanding borrowings made before and during reorganization under Title V and ERSA, principally for rehabilitation of track and equipment and payment of labor protection claims. The United States appealed the Court's assignment of the debt without its consent. In subsequent negotiations, however, the United States reached agreement with the Soo on acceptable terms for accelerating the repayment of the estate's debt obligations to the United States, and a closing, in which the Soo assumed the debt with United States consent, was completed on September 24, 1985.

Of the $155.7 million outstanding, the Soo agreed to pay $56.6 million with interest at approximately 12 percent within five months, $30.3 million with interest at approximately 10 percent within 15 months, and $68.8 million with interest at approximately 8 percent over 20 years with payments on the latter amount beginning after 5 years. The $56.6 million note and the $30.3 million note were secured by a first mortgage on the Milwaukee. Both of these notes were paid in full on December 24, 1985.

The Soo's purchase of the Milwaukee's core railroad assets also satisfied the conditions for cancellation, pursuant to section 7(h)(1) of the Milwaukee Railroad Restructuring Act (MRRA), of $50 million of assistance provided to the Trustee under section 7(d) of the MRRA. Section 7(h)(1) directs that assistance provided to the

Trustee under section 7(d) "shall be waived and cancelled when (A) the Milwaukee Railroad is reorganized as an operating rail carrier; or (B) substantially all of the Milwaukee Railroad is purchased." Section 7(h)(2) of the MRRA specifies that "substantially all of the Milwaukee shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Staggers Rail Act of 1980 1/ has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers."

1/ October 14, 1980.

EXHIBIT 1

RAILROAD REHABILITATION AND IMPROVEMENT FINANCING
RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 - TITLE V

($ Millions)

	FISCAL YEAR										
	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	Total
Section 505											
Authorized	$ 600.0	—	—	$100.0	—	$700.0	—	—	—	—	$1,400.0 1/
Appropriated 2/	—	$120.0	$200.0	170.0	$ 40.0 3/	8.7 4/	$ 80.5	($ 20.0)5/	($3.0) 6/	($5.0) 7/	591.2
Obligated	—	57.9	261.4	68.1	66.3	16.1	29.8	30.7	42.4	16.8	589.5 8/
Appropriated Funds Not Committed in Financing Agreements as of 10/01/85											1.7
Section 511											
Authorized	1,000.0	—	—	—	—	—	—	—	—	—	1,000.0
Appropriated	—	400.0	200.0	—	—	170.0	—	(170.0)	—	—	600.0
Obligated	—	12.0	74.4	33.4	119.5	8.4	—	15.0	5.8	2.5	271.0
Balance of Total Obligation Authority not Previously Committed as of 10/01/85											329.0 9/

Note: Footnotes on Page 2.

EXHIBIT 1

FOOTNOTES:

1/ Not more than $55 million in total authorized to be appropriated for fiscal years 1983, 1984 and 1985. ($5.0 appropriated; $33.0 transferred.)

2/ Net after rescissions and transfers.

3/ $100 Appropriated
- 60 Rescinded
$ 40

4/ $ 25.0 Appropriated
- 16.3 Total rescinded and transferred
$ 8.7

5/ $-15.0 Transferred to Commuter Rail Services
-10.0 Transferred to Conrail Labor Protection
5.0 Appropriated
($ 20.0)

6/ Transferred and provided as a conditional grant to Bloomer Shippers Railway Redevelopment League (Illinois).

7/ Transferred to Federal Aviation Administration.

8/ Does not include $3.0 million in grant funds provided to Bloomer Line.

9/ Total commitments to guarantee new loans limited to $4.0 million during fiscal year 1986.

EXHIBIT 2

RAILROAD REHABILITATION AND IMPROVEMENT FUND
SECTION 505
AS OF SEPTEMBER 30, 1985

	($ Millions)
Deposits	
Advances against Fund Anticipation Notes Issued to the Secretary of the Treasury 1/	$ 551.0
Interest/Dividends and Redemption Payments on Securities Purchased 2/	6.1
Appropriations	-0-
Income and Gains from Investments	-0-
Total Deposits	$ 557.1
Disbursements	
Drawdowns Provided to Recipients under Financial Assistance Agreements	$ 551.0
Payments of Principal on Fund Anticipation Notes 2/	6.1
Payments of Interest on Fund Anticipation Notes	-0-
Net Funds in Account	$ -0-

Fund Assets		
Securities Purchased Pursuant to Section 505 ($10,000 initial par value each)		
Equity		38,373
Chicago and North Western Transportation Co.	14,447	
Peoria and Pekin Union Railway Company	349	
Illinois Central Gulf Railroad Company	15,253	
St. Louis-Southwestern Railway Company	5,265	
Delaware and Hudson Railway Company	466	
Boston and Maine Corporation	2,593	
Debt		9,233
Hooper-Myron Corporation	210	
South Dakota	2,801	
Oklahoma, Kansas and Texas Rail Users Association	2,500	
Beverly-Royal Slope Port District	70	
Chicago & North Western Transportation Co.	1,612	
Mid-States Port Authority	1,635	
INRC, Inc.	340	
Delta Transportation Company	65	
Other Receivables Held in the Fund		$ 56.7
Soo Line note for section 505 debt of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Trustee assumed by the Soo (original principal value)	$ 56.7	
Investments		-0-

Note: Footnotes on Page 2.

EXHIBIT 2

1/ Advances Against Fund Anticipation Notes Drawdowns Provided to Recipients

Agreement	Amount
Milwaukee Road	$ 9.1
Milwaukee Road	24.4
Milwaukee Road	17.4
Milwaukee Road	5.8
Chicago and North Western	24.5
Chicago and North Western	120.0
Chicago and North Western (Reprog.)	1.4
Chicago and North Western	14.7
Illinois Central Gulf	23.8
Illinois Central Gulf	79.1
Illinois Central Gulf	49.6
Columbus and Greenville	4.0
Columbus and Greenville	4.4
Peoria and Pekin Union	3.5
Boston and Maine	25.9
Rock Island	1.6
St. Louis Southwestern	48.3
St. Louis Southwestern	4.4
Hooper-Myron Corporation	2.1
Directed Service	5.4
Delaware and Hudson	4.7
State of South Dakota	28.0
Bloomer Shippers League	2.9
INRC, Inc. (Iowa Northern)	3.4
Oklahoma, Kansas, Texas Rail Users	25.0
Beverly-Royal Slope	0.7
Mid-States Port Authority	16.3
Delta Transportation Company	0.6
	$551.0

2/

$1.6	Rock Island Settlement
0.5	Chicago and North Western Payments
4.0	Columbus and Greenville Repurchase
$6.1	

EXHIBIT 3

LOAN GUARANTEE FUND
SECTION 511
AS OF SEPTEMBER 30, 1985

Investigation Fees 1/	$1,478,842.96
Premium Charges 2/	2,193,940.26
Earnings on Investments	1,158,738.70
Accrued Interest on Purchase of Notes	(173.06)
Premium on Purchases of Notes	(93,046.26)
Adjustments on Return of Advances	27,749.28
Withdrawals--Other than Investments 3/	(3,521,546.85)
Total Fund as of September 30, 1985	$1,244,505.03
Investments in Obligations of United States 4/	$1,241,163.70
Available for Investment	3,341.33
Total Fund as of September 30, 1985	$1,244,505.03

	1/Investigation Fees	2/ Premium Charges
Missouri-Kansas-Texas	$ 54,125.00	$397,159.51
Milwaukee Road	160,918.22	946,638.56
Rock Island	110,299.76	46,168.14
Chicago and North Western	1,058,852.12	660,579.45
Delaware and Hudson	12,234.86	93,594.60
Auto Train	5,658.00	
Regional Transportation Authority	57,500.00	
Apache Railway	3,630.00	
Escanaba and Lake Superior	3,125.00	
United States Railway Association/MKT	9,375.00	44,800.00
Delta Transportation Company	3,125.00	5,000.00
	$1,478,842.96	$2,193,940.26

3/ On March 25, 1982 and September 23, 1982, outstanding investments were redeemed and the proceeds transferred to the Federal Financing Bank to carry out (in part) the Secretary's responsibilities with respect to the failure by the Delaware and Hudson Railway Company to make payments which were due the FFB on February 25, 1982 and August 25, 1982 for assistance provided under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976.

4/Investments

$ 138,917.59	10.29% Bill of 10/03/85
9,082.00	9.18% Bill of 10/31/85
9,157.71	8.47% Bill of 12/26/85
54,677.80	8.97% Bill of 02/20/86
146,298.40	8.91% Bill of 02/20/86
114,311.94	8.72% Bill of 03/20/86
82,640.17	8.11% Bill of 04/17/86
183,951.50	8.23% Bill of 04/17/86
138,000.00	13.75% Note of 05/15/86
57,000.00	14.875% Note of 06/30/86
173,000.00	14.875% Note of 06/30/86
27,847.67	7.53% Bill of 07/10/86
87,815.62	7.50% Bill of 08/07/86
18,463.30	7.62% Bill of 09/04/86
$1,241,163.70	

EXHIBIT 4

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976
AGREEMENTS EXECUTED
AS OF SEPTEMBER 30, 1985

	($ in Millions)	
BY APPLICANT	SECTION 505	SECTION 511
Beverly-Royal Slope Port District	$ 0.7	
Boston and Maine Corporation	26.0	
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	58.7 1/	$ 115.7 2/
Chicago and North Western Transportation Co.	162.6 2/	70.2 1/
Columbus and Greenville Railway/Delta Transportation Company	9.5 2/	2.5
Chicago, Rock Island and Pacific Railroad Company	1.6	22.9
Delaware and Hudson Railway Company	4.7	8.9
Delaware Otsego Corporation/New York Susquehanna and Western Railway Corporation	4.1	
Detroit and Mackinac Railway Company	3.4	
Heartland Rail Corporation	6.2	
Hooper-Myron Corporation	2.1	
Illinois Central Gulf Railroad Company	166.5 2/	
INRC, Inc. (Iowa Northern)	3.4	
Michigan Interstate Railway Company	2.4	
Mid-States Port Authority (Kansas)	18.0	
Missouri-Kansas-Texas Railroad Company		43.3 2/
Oklahoma, Kansas and Texas Rail Users Association	25.0	
Peoria and Pekin Union Railway Company	5.7	
St. Louis Southwestern Railway Company	53.5 3/	
State of South Dakota	30.0	
United States Railway Association/Missouri-Kansas-Texas Railway Company		7.5
RITEA Directed Service	5.4 1/	
TOTAL	$ 589.5 *	$ 271.0

1/ 4 Agreements
2/ 3 Agreements
3/ 2 Agreements

*In addition, $3.0 million of section 505 funds transferred and provided as a conditional grant to the Bloomer Shippers Railway Redevelopment League.

EXHIBIT 4

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 AGREEMENTS EXECUTED

SEPTEMBER 30, 1985

($ in Millions)

BY TYPE OF PROJECT	SECTION 505	SECTION 511
Facilities	$ 584.1	$ 62.8
Equipment	-	133.2
Labor Protection	-	75.0
Directed Service	5.4	-
TOTAL	$ 589.5	$ 271.0

SECTION 505 OBLIGATIONS BY FISCAL YEAR
($ Millions)

FY 77

$ 9.3.	Milwaukee Road	07-15-77
24.7	Chicago and North Western	09-09-77
23.9	Illinois Central Gulf	09-23-77
57.9	Total	

FY 78

4.1	Columbus and Greenville	10-18-77
24.5	Milwaukee Road	07-31-78
122.9	Chicago and North Western	09-12-78
84.0	Illinois Central Gulf	09-28-78
26.0	Boston and Maine	09-29-78
261.5	Total	

FY 79

1.6	Rock Island	07-12-79
58.6	Illinois Central Gulf	09-05-79
60.2	Total	

FY 80

18.9	Milwaukee Road	06-26-80
0.7	Wabash Valley (Directed Service)	08-08-80
0.2	Santa Fe (Directed Service)	09-04-80
5.7	Peoria and Pekin Union	09-23-80
48.5	St. Louis Southwestern	09-29-80
74.0	Total	

FY 81

2.1	Chicago and North Western (Directed Service)	10-14-80
2.4	State of South Dakota (Directed Service)	05-28-81
2.1	Hooper-Myron Corporation	07-02-81
4.7	Delaware and Hudson	09-24-81
4.8	Columbus and Greenville	09-30-81
16.1	Total	

FY 82

30.0	State of South Dakota	05-26-82

FY 83

25.0	Oklahoma, Kansas and Texas Rail Users Association	10-20-82
5.0	St. Louis Southwestern	11-24-82
0.7	Beverly-Royal Slope Port District	03-24-83
30.7	Total	

FY 84

15.0	Chicago and North Western	12-19-83
18.0	Mid-States Port Authority (Kansas)	02-29-84
6.0	Milwaukee Road	05-14-84
3.4	INRC, Inc. (Iowa Northern)	07-20-84
3.0 1/	Bloomer Shippers Railway Redevelopment	03-12-84
45.4		

FY 85

0.6	Delta Transportation Company (C&G)	05-08-85
4.1	New York, Susquehanna and Western	09-30-85
3.4	Detroit and Mackinac	09-30-85
6.2	Heartland Rail Corporation	09-30-85
2.4	Michigan Interstate Railway Company	09-30-85
16.7		

$592.5	Total Obligations

1/ Funds transferred from section 505 and provided as a conditional grant.

283b

SECTION 505
APPROPRIATIONS AND OBLIGATIONS

($ Millions)

	FISCAL YEAR										
	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	Total
Section 505											
Authorized	$ 600.0	—	—	$100.0	—	$700.0	—	—	—	—	$1,400.0 1/
Appropriated 2/	—	$120.0	$200.0	170.0	$ 40.0 3/	8.7 4/	$ 80.5	($ 20.0)5/	($ 3.0)6/	($ 5.0)7/	591.2
Obligated	—	57.9	261.5	68.1	66.3	16.1	29.8	30.7	42.4	16.7	589.5 8/
Appropriated Funds Not Committed in Financing Agreements as of 10/01/85											1.7

1/ Not more than $55 million in total authorized to be appropriated for fiscal years 1983, 1984 and 1985.

2/ Net after rescissions and transfers.

3/ $100 Appropriated
- 60 Rescinded
$ 40

4/ $ 25.0 Appropriated
- 16.3 Total rescinded and transferred
$ 8.7

5/ $-15.0 Transferred to Commuter Rail Services
-10.0 Transferred to Conrail Labor Protection
5.0 Appropriated
($ 20.0)

6/ Transferred and provided as a conditional grant to Bloomer Shippers Railway Redevelopment League (Illinois).

7/ Transferred to Federal Aviation Administration.

8/ Does not include $3.0 million in grant funds provided to Bloomer Line.

283c

PROJECTS FOR WHICH SECTION 505 FUNDS HAVE BEEN DESIGNATED OR COMMITTED

In Conference Report No. 99-450 accompanying the FY 1986 Appropriations Act as contained in the 1986 Continuing Resolution, P.L. 99-190, Congress designated section 505 funding for the following projects:

Amount ($ millions)	Project
$ 1.9	Columbus and Greenville Railroad
8.0	Gulf and Mississippi Railroad
12.5	Miami Commuter Rail
2.6	Ann Arbor Railroad
3.0	Bangor and Aroostook Railroad
5.5	Chicago and North Western Railroad
$33.5	Total

No applications have been received for the above projects. The statutory authority to obligate section 505 funds expired on September 30, 1985. The President's FY 1987 Budget includes Gramm-Rudman-Hollings Act reductions of 4.3 percent totaling $1.441 million for these projects and a proposal that the remaining $32.059 million of funds appropriated in the FY 1986 Continuing Resolution be rescinded. A request has been submitted to the Comptroller General for a legal opinion on the Secretary's authority to obtain appropriated funds for obligation under the section 505 program.

PREFERENCE SHARE FINANCING DATA

Mr. COUGHLIN. Please also update for the record the preference share financing agreement data found on pages 306 through 311 of last year's hearing record.

[Information follows:]

REDEEMABLE PREFERENCE SHARE FINANCING AGREEMENTS
($ Millions)

As of February 28, 1986, the following redeemable preference share financing agreements were executed with the terms indicated:

Railroad	Amount	Date	Purpose	Terms		Drawdowns	Estimated Internal Rate of Return
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	$ 9.3	07-15-77	Rehabilitate mainline between Chicago and Minneapolis/St. Paul.		2.03% (Statutory minimum)	$ 9.1	23.5%
" " " "	24.5	07-31-78	" " "	$ 22.6 1.9	2.03% 8.91%	24.4	15.6%
" " " "	18.9	06-26-80	Rehabilitate mainline between Chicago and Minneapolis/St. Paul and Wisconsin Valley Line.	18.2 0.7	2.03% 10.09%	17.4	15.8% ML 25.0% WVL
" " " "	6.0	05-14-84	Rehabilitate line between Appleton and Minneapolis, Minnesota.	5.5 0.5	3.24% 13.88% 6-20 years	5.8	9.22%
Chicago and North Western Transportation Company	24.6	09-09-77	Rehabilitate mainline between Chicago and Omaha and Proviso Yard in Chicago.	22.1 1.1 1.4	2.03% 7.88% 7.64%	24.5	12.5%
" " " "	122.9	09-12-78	" " "	155.4 1/ 7.5	2.03% 8.86%	121.4	12.8%
" " " "	15.0	12-19-83	Rehabilitate line between the Twin Cities, Minnesota, and Kansas City, Missouri.		5.80% 6-20 years	14.7	10.26%
Illinois Central Gulf Railroad Company	23.9	09-23-77	Rehabilitate segments of main corridor route between Chicago and New Orleans.	22.5 1.4	2.03% 7.95%	23.8	6.6%
" " " "	84.0	09-28-78	" " "	79.4 4.6	2.03% 8.89%	79.1	10.0-14.3%
" " " "	58.6	09-05-79	" " "		2.03%	49.6	11.0%

REDEEMABLE PREFERENCE SHARE FINANCING AGREEMENTS - CONTINUED
($ Millions)

Railroad	Amount	Date	Purpose	Terms		Drawdowns	Estimated Internal Rate of Return
Columbus and Greenville Railway Company	$ 4.1	10-18-77	Rehabilitate east-west main-line in Mississippi.	$ 3.5 0.6	2.03% 8.04%	$ 4.0	Not Applicable
" " " "	4.8	09-30-81	" " "		3.24% 6.20 years	4.4	Not Applicable
Chicago, Rock Island and Pacific Railroad Company	1.6	07-12-79	Track rehabilitation in Illinois and Iowa; fees for study of the economic and financial potential of the railroad.		2.03%	1.6	9.1%
Boston and Maine Corporation	26.0	09-29-78	Rehabilitate east-west main-line between Ayer, Massachusetts and Mechanicville, New York.	25.6 0.4	2.03% 8.89%	25.9	12.5-15.5%
Peoria and Pekin Union Railway Company	5.7	09-23-80	Rehabilitation of rail classification yard facilities in East Peoria, Illinois.		2.03%	3.5	9.0%
Delaware and Hudson Railway Company	4.7	09-24-81	Rehabilitate segments of main-line between Albany, NY and Montreal, Canada.		3.24% 6-20 years	4.7	Not Applicable
St. Louis Southwestern Railway Company	48.5	09-29-80	Rehabilitate segments of main track between Topeka, Kansas and Tucumcari, New Mexico.		2.03%	48.3	32.4%
" " " "	5.0	11-24-82	Rehabilitate portions of Armourdale Yard in Kansas City.		4.9% 6-20 years	4.4	11.0%
Hooper-Hyron Corporation	2.1	07-02-81	Acquisition of Milwaukee Road grain line from Hooper, Illinois to Danville, Illinois.		3.24% 6-20 years	2.1	Not Applicable

REDEEMABLE PREFERENCE SHARE FINANCING AGREEMENTS - CONTINUED
($ Millions)

Railroad	Amount	Date	Purpose	Terms	Drawdowns	Estimated Internal Rate of Return
Beverly-Royal Slope Port District	$ 0.7	03-24-83	Acquisition of Milwaukee Road trackage from Beverly to Othello to Royal City, Washington.	3.24% 6-20 years	$ 0.7	Not Applicable
State of South Dakota	30.0	05-26-82	Rehabilitate former Milwaukee Road trackage between Ortonville, Minnesota and Terry, Montana.	3.24% 6-20 years	29.0	7.0%
Oklahoma, Kansas and Texas Rail Users Association	25.0	10-20-82	Acquisition of segments of former Rock Island line between Salina, Kansas and Fort Worth, Texas.	3.24% 6-20 years	25.0	17.4%
Various	5.5	08-08-80 to 05-28-81	Directed service under Rock Island Railroad Transition and Employee Assistance Act.	Grants through Interstate Commerce Commission.	5.4	Not Applicable
Mid-States Port Authority (KS)	18.0	02-29-84	Acquisition and rehabilitation of former Rock Island trackage in Colorado, Kansas and Nebraska.	3.24% 6-20 years	16.5	Not Applicable
INRC, Inc. (Iowa Northern)	3.4	07-20-84	Purchase 140 miles of former Rock Island lines in Iowa.	3-24% 6-20 years	3.4	Not Applicable
Delta Transportation Company (Columbus & Greenville Railway)	0.6	05-08-85	Acquisition of Illinois Central Gulf trackage in western Mississippi.	11.912% 6-20 years	0.6	Not Applicable

REDEEMABLE PREFERENCE SHARE FINANCING AGREEMENTS - CONTINUED
($ Millions)

Railroad	Amount	Date	Purpose	Terms	Drawdowns	Estimated Internal Rate of Return
New York, Susquehanna and Western Railway Corporation (Delaware Otsego Corp.)	$ 4.1	09-30-85	Track rehabilitation in central and southern New York State and northern New Jersey.	6.267% 6-20 years	$ -	6.5%
Detroit & Mackinac Railway Company	3.4	09-30-85	Rehabilitation of easterly main line between Bay City and Alpena, Michigan.	3.24% 6-20 years	-	9.54%
Heartland Rail Corporation/ Iowa Interstate Railroad	6.2	09-30-85	Rehabilitation of major segments in Iowa of former Rock Island main line between Bureau, Illinois and Council Bluffs, Iowa.	3.24% 6-20 years	-	5.03%
Michigan Interstate Railway Company	2.4	09-30-85	Rehabilitation of line between Toledo, Ohio and Ann Arbor, Michigan.	3.24% initially 7.0% after reorganization 6-20 years	-	6.5%
TOTALS	$589.5 2/				$549.3	

1/ $2.6 million of available funds used for additional work financed with notes yielding 7.6 percent.

2/ In addition, $3.0 million of section 505 funds transferred and provided as conditional grant to the Bloomer Shippers Railway Redevelopment League.

FFB DIRECT LOANS

Mr. COUGHLIN. Please also provide for the record a breakdown of the $3.714 million in FFB direct loans as reported on page 113.

[Information follows:]

The $3.714 million in FFB direct loans in FY 1987 includes drawdowns of $1.8 million by the Missouri-Kansas-Texas Railroad Company under a section 511 loan guaranteed by the Administrator on September 24, 1984 and $1.914 million against new loans, not presently identified, which the Administrator expects to guarantee under section 511 in FY 1986.

RESPONSIVENESS

Mr. LEHMAN. Before we leave, back on page 14, the fact that information regards to the labor protection problems, I just would hope that next year you and your staff would take a look at our appropriations bills so that you would be able to deal with the rule easily.

Mr. RILEY. That was our fault. We just did not see the language for whatever reason.

FISCAL YEAR 1986 RESCISSIONS

Mr. LEHMAN. On page 114, please explain the reason for your proposed $14.355 million rescission of local rail service assistance fund.

Mr. RILEY. There are several reasons and they are budgetary. In our efforts to bring our budget down within the Gramm-Rudman-Hollings ceiling, we have tried to target our requests to fund programs where if the Federal Government does not act, no one is likely to act and to target our eliminations and rescissions, deferrals and cutbacks to areas where the states will act, even in the absence of Federal involvement.

In this case, there are 13 states who have set up programs similar to LRSA and are implementing them now and that makes that program an area where a cutback aimed at bringing us within budget limitations is likely to be met by concommitant action by the states.

Mr. LEHMAN. Please provide for the record a state by state breakdown of fiscal year 1986 LRSA funds that you propose rescinding.

[Information follows:]

Congress has appropriated $14,355,000 for the Local Rail Service Assistance Program for FY 1986. Of that amount $9,570,000 will be distributed to the States by way of the discretionary process and $4,785,000 will be distributed through entitlement as indicated on the attached sheet.

Local Rail Service Assistance Program
Fiscal Year 1986 Entitlements

STATE	ELIGIBLE MILEAGE	PERCENTAGE	ENTITLEMENT
ALABAMA	496.37	2.09	$100,000
ALASKA	0.0	2.09	100,000
ARIZONA	68.16	1.00	47,850
ARKANSAS	635.67	2.54	121,754
CALIFORNIA	340.65	2.09	100,000
COLORADO	308.24	1.47	70,266
CONNECTICUT	43.90	1.00	47,850
DELAWARE	13.16	1.00	47,850
DISTRICT OF COLUMBIA	0.00	1.00	47,850
FLORIDA	416.47	2.09	100,000
GEORGIA	378.57	2.09	100,000
IDAHO	223.39	2.09	100,000
ILLINOIS	1,257.04	4.41	211,245
INDIANA	482.56	1.58	75,746
IOWA	1,362.32	4.97	237,926
KANSAS	513.54	1.87	89,296
KENTUCKY	207.80	1.00	47,850
LOUISIANA	435.66	2.09	100,000
MAINE	372.25	2.09	100,000
MARYLAND	40.84	1.00	47,850
MASSACHUSETTS	89.51	2.09	100,000
MICHIGAN	812.83	2.83	135,418
MINNESOTA	998.79	3.57	170,616
MISSISSIPPI	325.67	2.09	100,000
MISSOURI	708.76	2.25	107,641
MONTANA	499.52	2.09	100,000
NEBRASKA	840.33	2.78	132,811
NEVADA	52.51	2.09	100,000
NEW HAMPSHIRE	151.57	2.09	100,000
NEW JERSEY	277.70	2.09	100,000
NEW MEXICO	51.30	2.09	100,000
NEW YORK	193.43	2.09	100,000
NORTH CAROLINA	382.68	1.30	62,090
NORTH DAKOTA	313.85	2.09	100,000
OHIO	680.00	2.20	105,469
OKLAHOMA	550.72	2.15	102,765
OREGON	97.83	1.02	49,000
PENNSYLVANIA	706.84	2.35	112,487
RHODE ISLAND	5.10	1.88	90,000
SOUTH CAROLINA	166.32	2.09	100,000
SOUTH DAKOTA	443.76	2.09	100,000
TENNESSEE	301.97	1.00	47,850
TEXAS	823.10	3.22	154,095
UTAH	188.42	2.09	100,000
VERMONT	4.23	1.00	47,850
VIRGINIA	121.46	1.63	77,875
WASHINGTON	607.11	2.09	100,000
WEST VIRGINIA	246.91	1.00	47,850
WISCONSIN	396.45	2.09	100,000
WYOMING	33.90	1.00	47,850
TOTALS	18,669.16	100.00	$4,785,000*

*The total amount of $4,785,000 has been proposed for rescission.

NORTHEAST CORRIDOR FUNDING RESCISSION

Mr. **Lehman**. On page 117, you propose rescinding $11.962 million in fiscal year 1986 Northeast Corridor funding. Congress chose to continue Amtrak in fiscal year 1986 and the President signed the bill. Why then do you propose rescinding these capital funds—is it your position that these improvements are not needed?

Mr. **Riley**. That recommendation is a function of our recommendation that the Federal Government cease to fund Amtrak operations. It is a reflection of the position that we have taken on the overall Amtrak funding levels.

Mr. **Lehman**. Would it not have been more proper to rescind the Amtrak money than Northeast Corridor?

Mr. **Riley**. The Northeast Corridor represented a capital investment in future Amtrak activities. The Administration is recommending no funding for future activites. We recognize the fact that Congress did, in fact, fund Amtrak's services for this year and did not go ahead to attempt to reverse that decision by rescission. But these funds are aimed at future operations and that is where we drew the line.

Mr. **Lehman**. Please provide for the record a breakdown of the NECIP projects that would not be undertaken in fiscal year 1986 if this rescission were approved. Please include the location and dollar amount of each project.

[Information follows:]

If the rescission of FY 1986 NECIP funds is approved the following projects would not be undertaken:

Project	Location	Dollar
Warren Street Bridge	Trenton, N.J	$2,201,000
Concrete Ties	Maryland	3,828,000
Reverse Signalling	Phila./Morrisville PA	3,540,700
Tunnel Electrical and Mechanical	New York City	2,392,300
Total		$11,962,000

The dollar amounts reflect a 4.3 percent reduction in accordance with Gramm-Rudman.

Mr. **Lehman**. Well, thank you for being with us today and we will have to get together at one of those old railroad song fests.

Mr. **Riley**. Thank you.

THURSDAY, MARCH 13, 1986.

FEDERAL RAILROAD ADMINISTRATION

NATIONAL RAILROAD PASSENGER CORPORATION

WITNESSES

JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

JAMES C. ROONEY, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

LOUIS S. THOMPSON, ASSOCIATE ADMINISTRATOR FOR PASSENGER AND FREIGHT SERVICES, FEDERAL RAILROAD ADMINISTRATION

JOHN M. MASON, CHIEF COUNSEL, FEDERAL RAILROAD ADMINSTRATION

W. GRAHAM CLAYTOR, PRESIDENT AND CHAIRMAN, NATIONAL RAILROAD PASSENGER CORPORATION

CHARLES HAYWARD, VICE PRESIDENT, FINANCE, NATIONAL RAILROAD PASSENGER CORPORATION

JAMES H. ENGLISH, VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, NATIONAL RAILROAD PASSENGER CORPORATION

Mr. LEHMAN. The Subcommittee will come to order.

This morning we will discuss the future of Amtrak. In accordance with the rules of the House of Representatives and the Committee on Appropriations, without objection, we will permit broadcast and radio coverage of today's hearing.

We welcome Mr. John Riley and Mr. Graham Claytor today.

We will begin with opening remarks by Mr. Claytor, followed by Mr. Riley.

Mr. Claytor, we will be pleased to hear your statement first, and if you can, we would like for you to summarize it, and we will put your full statement into the record.

AMTRAK OPENING REMARKS

Mr. CLAYTOR. Thank you very much, Mr. Chairman.

It is a pleasure to appear before this committee again, as always. In my prepared statement I have covered a good deal of ground involving Amtrak's developments over the past year and what problems remain.

But I would like to just make one or two points in my opening statement. My highest priority is to make Amtrak more self-sufficient. The real test for this is our revenue-to-cost ratio. Fifty-eight percent in 1985, up from 42 percent 10 years ago; 61 percent this year; and 63 percent next year.

This has been made possible by increased efficiency, increased revenues from better service, broader travel agent coverage, and a break-through in our labor agreements. We have just recently concluded agreements to take over train and engine crews on most of our trains throughout the country, on an hourly wage basis similar to the NEC agreement we made several years ago.

This will take 18 months to two years to implement, but when completed, should save us from 20 to $30 million per year.

Last year, I said we could manage to get by in 1986 with a 10 percent cut from the 1985 appropriation of $684 million, or $616 million.

With Gramm-Rudman this figure was later cut to $591 million, a reduction of over $100 million from the previous year, if we allow for inflation.

We will get by this time but only by using no appropriated funds this year for capital, by cutting back on our maintenance cycles, achieving such other internal efficiencies as we can manage, by refusing to consider new 403(b) proposals not previously committed, and finally, by making a number of reductions in train frequencies.

Some of the maintenance cycle adjustments are turning out to be counterproductive, and next year we will have to restore them, but we will manage to squeeze by this year.

For fiscal year 1987 we will need the $606 million authorized in the Budget Reconciliation Act for operations, plus at least some money from internally-generated funds, or other sources, for essential capital improvements.

Mr. Chairman, I could go on at length about what we are continuing to do to improve our operation, both financially and in the quality of our service, but I think it would be more productive to answer the questions that the Members of the committee may have. Thank you.

[The prepared statement of Mr. Claytor follows:]

TESTIMONY

OF

W. GRAHAM CLAYTOR, JR.

PRESIDENT AND CHAIRMAN OF THE BOARD

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

BEFORE THE

SUBCOMMITTEE ON THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS

COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

THURSDAY, MARCH 13, 1986

My name is W. Graham Claytor, Jr. I am President and Chairman of the Board of the National Railroad Passenger Corporation (Amtrak). I appreciate the opportunity to appear before you to discuss Amtrak's fiscal year 1987 budget.

I am hopeful that we will soon progress beyond the policy debate in this country over whether to continue federal support for intercity rail passenger service. Last year, the importance of our rail passenger system and the amount of support needed to sustain it were thoroughly debated during the federal budget process, and Congress voted on several occasions to reject proposals to eliminate or severely curtail funding for Amtrak. It also did something that has not happened since 1980, and that was to include in Title IV of the conference agreement of the Consolidated Omnibus Budget Reconciliation Act of 1985, a three-year authorization for Amtrak.

The debate regarding Amtrak's continued existence is counterproductive because it sends the wrong message to the traveling public and to the employees who have done so much to make rail a productive and viable mode of travel once again. Amtrak now needs to focus all of its energies on the task that Congress has laid out -- and that is providing the most efficient and comprehensive rail passenger system possible while reducing the corporation's dependence on the federal government. I believe we are well on our way toward accomplishing this objective and hope that we can count on your continued support.

My statement today will cover the following issues:

- Amtrak is not the cause of the federal budget deficit.
- The corporation is successfully accomplishing the goals Congress set, much faster than required. Service quality and financial performance continue to improve, and Amtrak leads the entire rail industry in pioneering efforts to improve productivity and technology.
- A significant further reduction in federal funding for Amtrak will result in the termination of all intercity rail passenger service and would ultimately cost the federal government considerably more than the appropriation that Amtrak is requesting to operate its present services.
- Amtrak can continue to work in cooperation with cities and states to improve and even expand rail passenger service if Congress provides the proper legislative tools and the necessary minimum funding.

FEDERAL BUDGET DEBATE

I do not believe that anyone could credibly suggest that funding for Amtrak, which amounted to 2.5 percent of the transportation budget, or 7/100s of one percent of the entire FY86 federal budget, is a main contributor or even an important factor in causing the deficit. Unfortunately, much of the debate on the budget is often characterized by provocative one-line statements, such as, "Amtrak could operate for 508 years on what the Pentagon receives," or conversely, "the Pentagon spends in 18 hours what it takes in public funds to operate a national rail passenger system for a year." I don't believe these types of phrases add much to the policy debate, and although it is sometimes easy to think in those terms, it really misses the point. I would prefer that Congress look at what we have done.

The fact is that the causes of growth in federal spending do not include Amtrak. Amtrak's FY86 funding level is its lowest since 1977 and federal grants to the corporation have decreased by 34 percent in the last 5 years. The changing patterns of federal spending can be demonstrated even more dramatically when you compare federal outlays in FY81 with those projected in FY86. For those two years, Amtrak's dollar outlays from the U.S. Treasury will have declined while outlays for other functions of the budget will have increased substantially. Total federal outlays will be up 45 percent. Defense will have increased by 71 percent. Total transportation was up 18 percent. But Amtrak was down 18 percent.

PERFORMANCE IMPROVEMENTS

My highest priority has been to make Amtrak more self-sufficient. There is no group of persons more eager to reduce Amtrak's dependence on federal appropriations than Amtrak employees, because the less government support, the less vulnerable the corporation will be during these cyclical budget crises. This is an objective Amtrak has been vigorously pursuing with some success for the last five years. We plan to continue these efforts with equal determination; as a practical matter, however, there is only so much that can be achieved in any one year.

Amtrak's revenue-to-cost ratio is the best available indicator of the corporation's efforts to improve its level of self-sufficiency. As such, it is the legislatively mandated benchmark by which our financial improvement is judged. It reflects Amtrak's efforts to make full use of all available resources to offset its passenger train operating expenses. In 1976, Amtrak covered 42 percent of its total costs through revenues, compared to 61 percent projected for FY86. We have submitted a fiscal year 1987 budget which assumes we will cover 63 percent of our costs or better in that year, and I have every intention of meeting that goal as well.

Amtrak's revenues are also covering a greater percentage of total system short-term avoidable costs each year. A few years ago, only 62% of short-term avoidable costs were covered by revenues. Based on first quarter results for FY86 we expect that figure to be 95 percent -- a further substantial improvement over last year -- and my objective is to cover all short-term avoidable costs in the very near future.

There is no secret formula to insure continued improvement; it's simply the result of every Amtrak employee performing his or her job a little better every day. These incremental gains may not seem like much when examined separately, but in total, they account for the dramatic improvements that have taken place on the Amtrak system. Compare some of the internal performance measures and the improvement that took place between FY84 and FY85: for example, our reservation and sales office employees handled 20.3 calls per man-hour, up from 19.9; the passenger services group reduced the cost of condemned food items as a percent of the cost of goods sold to 3.2 percent, down from 4.8 percent; car maintenance employees improved the availability of our passenger cars from 88.2 percent to 89.8 percent; and thousands of employees who deal with the customer on a day-to-day basis performed their duties so as to reduce complaints to 6.6 per 10,000 riders, down from 7.5.

These may seem to be small accomplishments, and most will never appear as headline items in Amtrak's annual report, but they all add up and represent the types of achievements that are turning this company around. For our customers, the hard work and innovation by employees simply translate into better service. For our principal stockholder, the federal government, it means a better bottom line and lower public funding needs. I am by no means satisfied that we are doing as well as we can or should, but we are continuing to improve.

Amtrak will continue to evaluate all of its routes and every aspect of our operation to make changes where necessary. We have become more flexible in order to respond quickly to new developments in the travel industry, which has undergone dramatic changes as the result of air deregulation and now decisions by the major bus companies to begin to reduce scheduled service. By adding frequencies where needed, or paring away underutilized train frequencies, or shifting schedules to meet peak demands, we have improved and will be able to further improve the financial performance of our route system.

Fiscal year 1985 was the best year in the history of the corporation, and Amtrak achieved record and near-record growth in almost every aspect of its financial and operating performance. In Fiscal Year 1985:

- Revenues reached $825.8 million, up 8.8 percent over 1984 and a record high for the company-as was the revenue-to-cost ratio of .58.
- Total passenger miles per train mile -- a key volume indicator which measures the number of passengers carried per train mile -- was 159, the highest in Amtrak's history.
- System wide ridership was 20.8 million up 4.2 percent from 1984, the third highest in Amtrak's history and the highest since 1980, a year affected by a gasoline shortage. Ridership in the Washington-New York-Boston Corridor, reached an all-time record of 11,236,639 passengers, up 4.1 percent over last year.
- Total passenger miles for the Amtrak system were 4.8 billion up 6 percent from 1984 and the second highest in Amtrak's history.
- Amtrak's overall on-time performance exceeded 80 percent for the third consecutive year. Metroliner on-time performance improved.

Fiscal year 1986 first quarter results show continuing improvement in passenger revenue which is up 11.4 percent. Total revenue is up 8.4 percent, and passenger miles have increased 14.4 percent compared to the same period in fiscal year 1985. We continue to make travel on Amtrak more attractive: new train services, refinements to existing services, special promotions and incentive fares, and a record of reliable service.

The Northeast Corridor remains a major success story for Amtrak, much of which can be directly attributed to the capital investment made by the Federal Government to improve this very important rail line. Amtrak is now a dominant carrier in the markets served in the Northeast Corridor. In FY85, Amtrak carried two-thirds of the 24,500 people per day who travelled by air or rail among the Northeast Corridor cities of New York, Newark, Philadelphia, Wilmington, Baltimore and Washington. These were intercity travellers and not daily commuters. Even if you segregate those who travelled between New York and Washington only, Amtrak handled almost 3,000, or 31 percent of the 9,800 daily air/rail passengers. I would like to underline those figures, not only because they testify to Amtrak's success in attracting riders to our service, but also because they bear upon the public policy decision that you have been asked to make. Amtrak now carries twice as many people among the cities between Washington and New York as all the airlines combined. We carry almost half as many passengers simply between the Washington and New York endpoints as all the airlines combined. To shut down Amtrak would not simply strain the capacity of airlines and airports to handle this traffic; it would overwhelm it. We have also made a comeback on the north end of the corridor; FY 1985 figures indicate a 56 percent increase in ridership over FY 1984 and a 50 percent increase in revenue on the New York to Boston segment. Further improvements to terminal trackage, stations and parking facilities now underway will add to the convenience of rail travel and enable Amtrak to compete more effectively in these important travel markets.

Many of Amtrak's most significant achievements in 1985 will be reflected in the performance measures of future years. Pursuant to agreements reached with several major air carriers, Amtrak tickets and reservations are now available through the Trans World Airlines and American Airlines computerized reservations and ticketing systems and should soon be available through the United Airlines automated system. Future plans include additional system links with Delta and Eastern Airlines. Amtrak is also now the first non-aviation transportation company to join the Airlines Reporting Corporation (ARC), which processes travel agency sales of airline tickets. Amtrak's entrance into ARC will greatly improve cash flow and enable collection of travel agent sales on a weekly basis, instead of monthly. As a consequence of these changes introduced in late FY85, the number of Amtrak-authorized travel agents has nearly doubled, and soon it will be as easy for all of the country's 27,000 travel agency locations to make

Amtrak reservations and sell Amtrak tickets as it is for them to sell airline tickets.

Amtrak's goal to integrate its system with that of airlines and travel agencies will complement sales efforts by our own sales reservation agents and ticket agents, which means added convenience for passengers purchasing rail tickets. Sales by travel agents now account for over 65 percent of the ticket revenue for the major airlines and the percentage may be as high as 75 percent when you include all air carriers. There is enormous potential for Amtrak to increase sales, based on the impact travel agents have had on ticket sales in the airline industry. We estimate that Amtrak ticket sales by travel agents alone, will grow from $169 million in FY 1985 to $220 million in FY 1986 and will account for 36 percent of our transportation revenues this fiscal year.

Amtrak has also become a leader in a number of important areas in the rail industry and has pioneered efforts to improve the productivity of its workforce. Pursuant to agreements reached this winter with the Brotherhood of Locomotive Engineers (BLE) and the United Transportation Union (UTU) Amtrak will become the first and only major U. S. railroad to operate its trains nationwide under totally revised, modern work rules.

Under the new agreements, Amtrak will directly employ most engineers, conductors and their assistants working in rail passenger service outside the Northeast Corridor. Amtrak took over train and engine crews in its own Washington-to-Boston rail corridor January 1, 1983 and on Auto Train. Outside these areas train operating crews are now employed by the freight railroad over whose tracks Amtrak passenger trains operate. The transfer of operating crews to Amtrak will begin on April 1 and take about 18 months to two years to complete. The agreements provide that train and engine crews will no longer be compensated under the freight industry's standard of train mileage or hours of service, known as the dual basis of pay. Rather, they will be paid by Amtrak under a contractually defined standard 8-hour per day work week. The savings from the new contracts when fully implemented will be between $20 and $30 million per year.

In another related area, the Joint Labor Management Productivity Council has completed a top-to-bottom reorganization that will permit virtually every Amtrak employee nationwide to become involved in the cooperative effort. This has been accomplished by establishing a regional steering committee in every division with representatives from every participating labor organization and every department. So whether they are an on board service attendant in New York, a reservation sales agent in Chicago or an electrician in Los Angeles, there is someone from their organization and department to represent them and pursue their proposals before the Council. While some regional steering committees have been more effective than others, all are making progress. Since its formation in 1982 the Council has successfully developed ideas that have saved thousands of dollars while strengthening relationships among Amtrak employees. The accomplishments and ongoing work of the Council and its steering committees are described in the progress report which I am submitting as part of the record.

Improving productivity is not the only area where Amtrak is breaking new ground. Over the years, Amtrak has also made significant contributions through cooperative efforts with companies in the rail supply industry to develop and introduce new technology which has and will continue to directly benefit the entire industry. We are not conducting research projects that may or may not have some type of application in the real world. Amtrak is interested only in promoting advances in technology, as any other business would be, that will help improve the company's operating and financial performance -- and the experience gained from these activities is being shared with the freight railroads and commuter rail authorities.

Amtrak worked closely with an electric supply company in this country to design and build its own track geometry car at our Beech Grove facility. The car is one of the first of its kind to collect data at operating speeds of more than 120 mph with on board computers that provide real-time information on track conditions. This has enabled Amtrak to respond more quickly to track problems and improve ride quality for corridor passengers while maintaining maximum safety standards. We were also the first, and remain the only, American railroad to test, introduce, and adapt to American railroad requirements, an automated track laying system and a track stabilizing system to restore the stability to the track structure following maintenance work so that trains can run at maximum speed sooner than was previously possible. Amtrak has pioneered efforts in new track design and has the largest installation of concrete ties in the United States. We have proven to the industry that this technology is suitable for both freight and high speed passenger trains. Amtrak was also the first railroad to introduce a new wheel impact detector that identifies cars with wheels requiring maintenance before they can cause damage to track or equipment. Still to be completed is a new signaling and centralized electrification and traffic control system, to be based in Philadelphia, which we are developing in conjunction with the Chrysler Corporation. When completed, it will be one of the most sophisticated systems in the world because of the complexity and diversity of our Northeast Corridor operation.

In the mechanical area, we are currently working with Brown Boveri Corporation to apply to one of our high-speed diesel-electric passenger locomotives three-phase alternating current asynchronous traction motors and associated controls, in place of the existing direct-current systems. We believe that this will improve acceleration, increase speeds and greatly reduce maintenance costs of traction motors. The Association of American Railroads is vitally interested in this project and has requested permission to test the prototype at its research facility in Pueblo, Colorado. On the basis of operations already conducted in Europe, I am confident that we will obtain good results and that this advanced propulsion system may well be included in the next generation of diesel freight locomotives built in this country.

As a matter of fact, Amtrak worked closely with General Motors Corporation to develop our current F-40 locomotive, the first new diesel locomotive built in America exclusively for passenger service in the last 25 years. Unlike units designed and built during the 1940's, these locomotives have the capacity to generate 480 volt electric power to run the heat, air conditioning and electric systems in our passenger cars. This has enabled the conversion of our entire passenger car fleet from traditional axle-driven electric power and steam heat, a technology that had been in existence since the early 1900's, to head-end electric power. As anticipated, this has resulted in both increased reliability and in reduced costs. Today, the F-40 is now a standard locomotive which has been purchased "off the shelf" by several commuter authorities, and Amtrak is serving as a paid consultant for commuter operators who are now converting their passenger fleet to more reliable head-end electric power.

Finally, our new single-level prototype passenger cars have moved from the mock-up stage into actual construction at Beech Grove. Technical improvements from incorporating state of the art computer diagnostic systems to monitor the air conditioning, heating and electrical systems, to the introduction of modular construction, will allow for better quality control during construction and will reduce the cost to build and maintain the equipment. The new stainless steel car shells will be standardized, which would avoid a chronic problem that has existed in the rail supply industry for many years, and the same car shell will be used for all four car types - sleeping cars, lounge cars, dining cars and coaches. This by no means represents all that is being done to improve rail technology, but it illustrates the direction in which we are going.

IMPACT OF ZERO FUNDING

Congress has made important policy decisions to support and encourage the development of a national transportation network. These policies greatly influence our changing society and, today, more than ever, the availability of transportation, its cost and convenience set the parameters for some of the most basic decisions we make as individuals concerning where to live and work, and how to spend our leisure time. Clearly, the United States is the most mobile nation in the history of the world. Travel is now available to persons of all income levels, because of policy decisions made by this legislative body, many of which you make through the appropriations process on a year-to-year basis. We have a tendency to take this all for granted now, and don't think twice about the resources necessary to build and maintain these transportation systems as we speed down Interstate-95, fly back and forth to California in one day for a business meeting, hop on the Washington Metro to get to work, or take a high-speed Amtrak train to New York City for the weekend.

As this subcommittee knows better than any other, transportation programs took a greater percentage cut in fiscal year 1986 than any other major function of the federal government. It should be clear by now that overdoing this reduction in funding for transportation is false savings. The decisions made this year will catch up with us sooner or later, because a good transportation system is important to maintain both the health of the economy and the quality of life in this country. During the debate over the fiscal year 1986 budget, I thought we were able to demonstrate that a drastic reduction in Amtrak funding was a bad decision over the long term and and would be a tremendous immediate waste of the federal resources already invested to improve rail passenger transportation. More immediately, labor protection costs mean that eliminating Amtrak would not even save outlay money during the fiscal year in which train service would be discontinued.

The $3 billion invested in Amtrak to upgrade the Northeast Corridor, purchase new rolling stock and locomotives, and essentially rebuild maintenance facilities, that are now some of the most efficient in the world, would be wiped out completely. If there were no intercity rail passenger service, our capital assets would have to be liquidated at approximately scrap value despite the fact that it would cost $6 to $9 billion today to reproduce those assets.

In addition, approximately 23,800 employees around the country, in 44 states, would lose their jobs if Amtrak were terminated. Abandonment of intercity rail passenger service would trigger provisions of agreements entered into by Amtrak and its contract railroads at the direction of Congress to protect the interests of employees adversely affected by train discontinuances. This protection agreement was consistent with other federally directed agreements between freight carriers and their employees at the time. The labor protection payments that Amtrak was required by statute to commit to pay to displaced employees will come to approximately $2.1 billion over a six-year period. So, in addition to $3 billion of investment that gets scrapped, a new liability of $2.1 billion is created. In the first year, Amtrak's liability would be about $660 million, which is actually more than our total grant for operations in FY 1986 and considerably more than we are seeking in FY 1987. In addition, the railroads over which we operate would be subject to an additional labor protection liability of about $177 million over a six-year period.

In the event Amtrak were forced into bankruptcy, the liquidation value of our assets would be totally insufficient to pay $2.1 billion of labor protection liability, quite apart from substantial other claims. Claimants would accordingly turn to the only other source of payment -- the United States Government. The Federal Government created the promise to pay labor protection, thus encouraging employees to stay with an industry that had an uncertain beginning. If it then triggered the obligation to pay labor protection by terminating Amtrak funding, and at the same time declined to give Amtrak the funds to carry out its commitment, I agree with the advice received from outside counsel that there would be very serious legal questions as to whether or not the Government was liable for this obligation. The same serious questions would be raised if Congress tried to eliminate the labor protection obligation at the same time it was enacting legislation leading to Amtrak's bankruptcy. It is quite clear that major litigation would ensue once labor found that it could not recover these statutory benefits from Amtrak. The government might well end up paying the whole bill. The notion that this is not a problem for the Federal Government or would not impact on the deficit, is not realistic.

In addition to the labor protection liability, there would also be enormous additional costs imposed on other Northeast Corridor users such as the commuter agencies and freight railroads. Amtrak owns, maintains, and operates the Northeast

Corridor. If Amtrak were forced into bankruptcy, the entire Northeast Corridor would close down, unless other users were able to pick up the costs to operate it. At the present time, all of the other users of the Corridor between New York and Washington including the Harrisburg line -- the commuter agencies, Conrail, and Delaware & Hudson -- reimburse Amtrak for avoidable costs which amount to $62 million per year for the use of that segment of railroad. If Amtrak were to stop service, it would cost these users some $227 million to maintain and operate that part of our line needed to continue current commuter and freight operations. The railroad cannot run without signals, without dispatchers, without tower operators, and without maintenance. These costs would have to be picked up in full by the remaining users. Absent Amtrak, the commuter authorities and freight railroads combined would have to increase their current contribution of $62 million by an additional $165 million to continue their operations over Amtrak lines.

If Amtrak were to go bankrupt, all operations on the New York-Washington Corridor would stop unless the commuter agencies and freight railroads who use the NEC right-of-way were able to pay the trustee of Amtrak's estate to operate the railroad on a day-to-day basis. A shutdown of the New York-Washington portion of the NEC would mean that 16,500 daily intercity passengers would have to be absorbed by other modes, in addition to the 140,000 commuter trips each day provided by local transit agencies over this Amtrak line. Absorbing only those intercity rail passengers between New York and Washington, D.C., not counting travel to and from intermediate cities, would require some 43 additional landings or takeoffs at National Airport alone, during the busiest times of day. Automobile and bus transportation is not a realistic alternative for many travellers in the NEC, especially those travelling for business.

In addition, four freight railroads use extensive portions of our right-of-way and operate over 90 through and local freight trains a day on the Corridor properties. Conrail serves 260 businesses on Amtrak-owned lines south of New York, and among its major customers are automobile plants such as those of Chrysler at Newark, Delaware, General Motors at Linden, New Jersey, and Ford at Metuchen, New Jersey. There's a similar problem on the north end between New Haven and Boston and on the Springfield segment, with some 97 industries on portions of these lines served by Conrail. The additional management and operating costs there of some $43 million would be so high in proportion to freight volume, that it is quite possible that some or even all of it might have to be abandoned. In addition, Amtrak also shares the Rhode Island-to-Boston end of the

Northeast Corridor with Massachusetts Bay Transit Authority (MBTA) and provides dispatching and maintenance services for this agency's commuter operation that handles some 25,000 daily commuters in the Boston area. Elimination of Amtrak would approximately double the $4 million annual cost of these services to MBTA.

In sum, a zero Amtrak budget would create over $200 million in added annual costs that other users -- or the U.S. Government, the usual provider of last resort in critical cases like this -- would have to pay just to keep the other services running on the Corridor.

A zero Amtrak budget would also have a major impact outside the northeast. Almost 50 percent of Amtrak's riders, 75 percent of its passenger miles and two-thirds of its revenues come from its non-corridor operations, largely long-haul services. Thirty-six percent of these long haul passengers have family incomes of under $20,000 (U.S. average family income is $28,600), and 58 percent have family incomes below $30,000, compared to 33 percent of all travellers. It is also a transportation system which is used extensively by older Americans. Thirty-five percent of non-corridor passengers are over 55 years old and 18 percent are age 65 or older.

In addition, we serve over 500 communities nationwide, more communities than all the major airlines serve together. Some 117 communities served by Amtrak have no air service and if the present Essential Air Service subsidy were terminated, that number would increase to 157. Eighty-three Amtrak-served communities have no bus service or other surface common carrier service (and this number is increasing as more scheduled intercity bus service is discontinued), and twenty-eight Amtrak-served communities have neither air nor bus service. In many areas, during severe weather, Amtrak is the only mode moving.

NATIONAL TRANSPORTATION POLICY

If promotion of interstate commerce is still a basic premise of our federal transportation policy, then continuing support for intercity rail passenger service, and for that matter, all modes of transportation, should remain an important priority of the Federal Government. The federal investment made in Amtrak thus far has been well managed. The amount of transportation that we now generate for each dollar of federal operating support has more than doubled over the last five years. I am committed to running as efficient a railroad as any in the country, and will continue to pursue a course designed to improve our financial performance and reduce our requirement for public funds. In order to accomplish this, I need your continued support.

The first and most important action Congress could take to assist in this effort would be to pass the Consolidated Omnibus Budget Reconciliation Act of 1985, H.R. 3128, which contains a three-year authorization for Amtrak. Title IV of the bill freezes Amtrak's authorization for three years, allowing a modest inflationary adjustment for the out years, and provides $606.1 million in FY87 and $630.3 million for FY88. In addition, the bill contains certain legislative changes that would enable Amtrak to increase revenues by approximately $30 million per year. The majority of these revenues would result from increased payments by freight railroads to Amtrak to use the Northeast Corridor so that we could begin to recover a greater percentage of the cost incurred to operate and maintain this rail line. I am pleased that the House finally approved the Conference Report on March 6, 1986.

In the absence of this legislation, Amtrak is requesting a funding level for fiscal year 1987 of $636 million to operate all existing service. If the reconciliation bill is enacted into law, Amtrak can reduce its funding requirement by some $30 million to the proposed authorization level of $606.1 for FY 1987. The budget for FY87 includes a very modest capital program. It also assumes resumption of certain scheduled track and equipment maintenance programs which had to be deferred or slowed in FY86.

As you know, the final FY86 continuing resolution passed by Congress, Public Law 99-190, contained $616 million for Amtrak, a 10 percent reduction from the FY85 level of $684 million. Funding for Amtrak this fiscal year was further reduced under the Gramm-Rudman Balanced Budget Act by 4.3 percent, which translated into a $25.3 million reduction down to $591 million. Amtrak was able to minimize the impact of these funding reductions by taking actions early in the year, long before the continuing resolution was finally passed into law. One-third of the $93 million funding reduction was achieved through the implementation of internal operating efficiencies, and another one-third by eliminating our publicly funded capital budget for FY86. Only after all other possible steps were taken, did we reduce service on January 12 of this year. The service changes consisted of frequency reductions on 10 routes across the country where we discontinued or restructured those trains with higher costs per passenger mile.

Last year I indicated that Amtrak could, with considerable difficulty, survive a 10 percent funding cut from the 1985 appropriation of $684 million, without major disruption to service. Amtrak is much more vulnerable this year because the cut made is significantly more than this, and we cannot, in good conscience, defer some important maintenance functions for another year. Furthermore, an approximately $600 million appropriation in 1987 dollars would represent a further reduction below the FY86 level of some $20-25 million as a result of inflation (which we assume for this purpose would be applied to both revenue and expenses). Any further reductions in FY87 appropriations would almost inevitably result in further service reductions, which in turn would adversely affect both our short and long-term volume of business and revenues.

In addition to providing the requested funding in FY87, there are a number of proposals that Congress should consider to help Amtrak in the long term. One of our most serious concerns has been the scarcity of funding for capital projects. It's the life blood of the rail industry and has been one of the biggest contributors in our efforts to reduce costs and become more efficient. The capital investment made in past years to modernize facilities and to refurbish and replace our aging fleet of rolling stock has played a large role in the improvement that has taken place to make Amtrak more reliable and cost effective. For FY86, we will have no capital appropriations and have requested only $29 million for FY87. This, of course, does not include the FY86 NECIP appropriation of $12 million which will be used for continuation of multi-year capital work in the corridor. We certainly hope this Committee will not allow those funds to be rescinded. The FY87 NECIP request for those same NEC-planned but uncompleted projects is $24 million.

Fortunately, Amtrak over the last five years has been able through its corporate development activities to generate some modest funds that can be made available for capital; in fiscal year 1986, we anticipate capital funding from these sources of $25 million, and hope to be able to achieve $35 million in fiscal year 1987 from these services, plus increased revenues from provisions of the Reconciliation Act, if passed. This, however, is totally insufficient over the long pull for a company as capital-intensive as ours is, and with an annual operating budget of approximately $1.5 billion per year.

In the future, as a self-help approach to finance an even greater portion of our capital budget internally, Amtrak is pursuing legislation that would give the corporation authority to sell tax-exempt bonds to finance capital improvement projects. The sale of tax-exempt bonds is routinely used by state and local authorities to finance the construction of roadways, bridges, airports, seaports, and local transit facilities. The sale of tax-exempt obligations has enabled public authorities to reduce finance charges for construction of important transportation projects and has provided them access to private capital markets, with substantial benefits to the users of those facilities, including air and highway carriers.

Repayment of such bonds issued by Amtrak would be secured by proceeds from the particular project being financed or by long-term, dedicated revenue sources generated through Amtrak's corporate development efforts, and would not be guaranteed by the federal government. Any obligation sold by Amtrak would be subject to the same market constraints and safeguards that investors impose on other tax-exempt revenue bonds to ensure that the principal and interest is repaid. This funding mechanism is often used in lieu of direct capital grants by states and local communities, and I believe that within about a decade Amtrak should be able to finance on a revolving basis the entire amount of a realistic capital budget if we receive similar authority from the Congress.

Amtrak has come a long way in the last 15 years and as a result of policies formulated by management and adopted by our Board of Directors, we have had to decline numerous requests to add new services to the basic route system, and limit future growth to those routes that could be expected to decrease our need for federal funding. Along these lines, Amtrak has encouraged states and cities to participate to a greater degree in financing the operation of our national system. These efforts have resulted in decisions by states and communities served by Amtrak to build and operate new stations at no or little expense to Amtrak and to add service on heavily travelled routes by fully participating in the state-supported 403(b) program. This subcommittee and others in Congress have also encouraged joint efforts with states to broaden and improve rail passenger service. Two of the best examples are the West Side Connection and Atlantic City-Philadelphia projects, which when completed, will enable Amtrak to further lower its federal funding needs. Both projects demonstrate how limited federal resources can be used to leverage state, local and private funding for large scale rail projects.

Last year Congress did not approve the proposed budget cuts that would have threatened Amtrak's existence. In FY86, Amtrak will have less to work with in the way of material resources, but the one thing we will not lack is the dedication of our employees. There is much work ahead. I hope we can parlay this dedication and the experience we have gained over the years to continue to improve and expand rail service in this country. I look for your continued support in this endeavor.

Mr. **LEHMAN**. Thank you, Mr. Claytor. By the way I am going up to New York Sunday afternoon on Amtrak.

Mr. **CLAYTOR**. Thank you. I hope we get you there nicely.

FRA OPENING REMARKS

Mr. **LEHMAN**. John.

Mr. **RILEY**. I just have a very brief statement, Mr. Chairman, and it is good to be back a second day.

The economic realities that led the Administration to recommend no funding for Amtrak in last year's budget have not changed, and we request no funding for Amtrak in this fiscal year.

Amtrak has significantly improved its operating efficiency over the last three to four years. They have cut their losses by about $250 million in constant dollars since 1981, and if you put inflation factors in, they have cut it in half, and the man to my left, Graham Claytor, deserves the credit for that.

He has done a superlative job. But even with these improvements, Amtrak continues to lose more than $600 million a year with no end in sight.

These numbers actually understate the government's exposure on Amtrak, because the $600 million figure—and I think Graham made reference to this—is based almost entirely on operating losses.

Amtrak faces significant capital investment needs over the next few years, needs which the Federal government will likely be asked to finance. At a time when we have got to work together to meet the deficit reduction targets in Gramm-Rudman-Hollings, the Federal government simply cannot commit more than $3 billion to subsidize Amtrak's operating losses over the next five-year budget cycle.

Termination of Amtrak subsidies does not in and of itself mean an end to Amtrak service. It is essential, though, for those who are interested in continuing Amtrak's service to be realistic about their choices, and their need to take the initiative, if they wish to maintain service in the absence of Federal financial support.

Amtrak cannot be run without subsidy. While changes in workrules and operating procedures could enable Amtrak's losses to be reduced, subsidy needs would remain substantial, even under the best of circumstances.

I said a year ago that FRA would devote its full energies, as well as its analytical and intellectual resources, to working with States and localities to develop a transition plan, should they wish to step into the Federal government's role as subsidizer.

That offer still stands, and we are sincere in our offer of logistical assistance, should States and localities wish to take that initiative.

Should no party step forward to replace the Federal government as subsidizer of Amtrak services, the corporation would, in all likelihood, declare bankruptcy, and a trustee would be appointed to manage its affairs.

As in any other railroad bankruptcy proceeding, the trustee could be expected to seek preservation of service in areas where any private party or regional compact offered to take responsibility for Amtrak operations. In other cases the assets would be applied to the obligations of the estate.

One fact is clear. In the face of annual deficits approaching $200 billion, the Federal government cannot continue to invest more than a half a billion dollars annually in Amtrak.

Now Mr. Chairman, I conclude with two general comments. One, when I referred to intellectual resources, I was really referring to the man on my right, Lou Thompson, who has joined me today.

He is our Associate Administrator for Passenger and Freight Services, and as you know, Lou was the project manager of the Northeast Corridor Improvement Project, and has lived with this for many, many years.

On his right is Jack Mason. Jack is our chief counsel and was with us at yesterdays hearings.

A final comment is, I hope in the course of this morning's hearing—and I have looked at some of the committee's questions and I agree with this—that Mr. Claytor will be candid, be honest, and give us a straightforward answer on what I think is the most important question, and that is why the calzone is off the menu on the Metroliner going north.

I regularly consumed that calzone and I am beginning to suspect I may have been the only one that did. In fact now that they know that, I might be afraid to consume it if they put it back on.

But thank you, Mr. Chairman. This is not an easy issue and I appreciate the committee having us up here this morning and giving us a chance to discuss it.

[The prepared statement of Mr. Riley follows:]

TESTIMONY OF JOHN H. RILEY
ADMINISTRATOR
FEDERAL RAILROAD ADMINISTRATION
BEFORE THE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

MARCH 12, 1986

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to present the Federal Railroad Administration's (FRA) budget request for FY 1987. FRA's request for $50.5 million and 660 positions is most austere in light of the Balanced Budget and Emergency Deficit Control Act of 1985, or the Gramm-Rudman-Hollings Act as it is popularly known.

As you know, Mr. Chairman, the President is committed to reducing the deficit in compliance with the Act but still facilitating a safe and efficient national transportation system. As stated in his FY 1987 Budget to Congress, an integrated and efficient national, State and local transportation network requires the combined and cooperative efforts of all the parties concerned, the Federal, State, and local governments and the private sector. Each level of government should concentrate its efforts on the transportation facilities and services for which it is appropriately responsible with the Federal government concentrating on the interstate transportation system.

In terms of resource allocation, safety is a key focus of FRA activities. However, FRA's role is also promotion of an efficient and competitive rail transportation environment by acting as a catalyst in railroad technology development and innovation, and encouraging State and local governments and rail industry's labor and management to act together for the common good and public benefit. FRA's mission further requires us to study proposed regulatory changes and the impact of railroad developments on the transportation industry, monitor rail traffic, provide economic forecasting and study the financial condition of individual railroads and the industry as a whole. Since we met last year, I am proud to say that FRA has gone through a very intense and successful year in achieving these goals. Before I discuss FRA's FY 1987 budget, I want to share some of our recent achievements as well as our future plans with the Subcommittee.

RAILROAD SAFETY

FRA's safety staff, Executive Director and lawyers made outstanding progress in all aspects of our safety program: rulemaking and enforcement, Operation Lifesaver, and civil penalty assessments and collections, and labor-management activities.

Assessments based on preliminary data for 1985 indicate that overall train accidents decreased 11.2 percent in 1985 compared to 1984, from 3,712 to 3,295. When normalized by train miles, which decreased by 5.0 percent, train accidents decreased by 6.6 percent. Total rail related fatalities decreased by 214, from 1,247 in 1984 to 1,033 in 1985, a decrease of 17.2 percent. This exceptional progress in safety performance has been the trend for the past five years thanks to the improving financial health of the industry and combined efforts of labor, management and Federal and State governments in safety compliance and enforcement.

You may recall that in 1984, trespasser fatalities continued to increase and rail-highway crossing fatalities showed an increase for the first time in 6 years. To counteract these developments, FRA's field support of Operation Lifesaver, a public education program which focuses on grade crossing safety, was emphasized. FRA inspectors participated in over 1,000 Operation Lifesaver presentations in 1985. As part of these Operation Lifesaver presentations, FRA personnel also informed school and civic group audiences about the dangers of trespassing on railroad property. We believe that these presentations played a major role in the 1985 decrease in rail-highway crossing and trespasser fatalities.

Preliminary data further indicate that 1985 rail-highway crossing accidents, fatalities, and injuries decreased when compared to 1984. The number of crossing accidents decreased 5.0 percent from 7,281 to 6,920, a decrease of 361; the number of fatalities decreased 12.2 percent from 649 to 570, a decrease of 79; and the number of injuries decreased 8.8 percent from 2,910 to 2,655, a decrease of 255.

Despite these ongoing efforts and the decrease in 1985, rail-highway crossing and trespasser fatalities continue to comprise over 90 percent of all railroad related fatalities. FRA's continuing concern about public safety at rail-highway grade crossings, therefore, prompted us to again hold public hearings in 1985 to explore all feasible alternatives to improve this situation. We published a report, in July 1985, Rail-Highway Crossing Safety Report, which documents Department and FRA policy as well as current and proposed initiatives. On July 16, 1985, Secretary Dole announced a new initiative, a series of demonstration projects that utilize the low cost corridor approach to rail-highway crossing safety. FRA has worked with FHWA in establishing projects in several disparate locations from Florida to Alaska. And FRA will continue to emphasize Operation Lifesaver with FRA inspectors making even more presentations in 1986.

On the enforcement side, FRA has continued its intensive hiring efforts to maintain the level of safety inspectors at the authorized level of 325 in track, signal, equipment, hazardous materials and operating practices disciplines. FRA is continuing its effective coordination of Federal and State inspection activities and supplementing ongoing inspections with at least three comprehensive systemwide assessments of selected railroads and 10 to 20 more specific assessments each year.

In some situations, the best method for obtaining compliance with rail safety laws is assessment of civil penalties. In 1985, FRA made significant improvements in the civil penalty process. To facilitate monitoring, reporting, evaluation, and planning every facet of the process has been computerized--from receipt of the inspector's report recommending a civil penalty to assessment of the penalty and collection of the penalty. And to manage the large caseload, with the cooperation of the railroads, we have successfully implemented an annual cycle whereby final action is taken on each violation report by the end of the year following the one in which it was received. These measures helped FRA to liquidate a large backlog of older claims and to impose a comprehensive management scheme on the process. The result is that FRA is more current in its handling of civil penalty cases than it ever has been.

In nearly all cases, initial assessments of civil penalty are resolved through negotiations with carriers and shippers leading to a compromise, as authorized by the rail safety statutes. The negotiation process provides an opportunity for a valuable exchange of views on safety issues and often produces specific commitments to improve compliance. In FY 1985, FRA collected $6,142,550 in civil penalties, more than it has collected in any year since 1980 and the third highest total in its history.

FRA is continuing its active safety regulatory program to ensure that it keeps pace with technological development and operational change--indeed, after an examination of the program during the past year, the DOT Inspector General gave it high marks.

In 1985, FRA published a final rule addressing the problem of alcohol and drug use in railroad operations. This carefully developed rule was the culmination of an extensive investigation and rulemaking proceeding that began in June of 1983. The rule will aid in the detection of alcohol and drug use among railroad operating employees, and more importantly, save lives by deterring these employees from operating trains while impaired by alcohol and/or drugs. This rule was challenged -- and with the recent action of the Supreme Court we are now able to implement it.

Following issuance of the rule, FRA held five seminars across the Nation to introduce the rule and accompanying field manual, attended by 2,000 interested parties including union officers, railroad representatives and FRA Safety inspectors.

In addition to the alcohol and drug rule, FRA has been actively engaged in other important safety regulatory efforts in 1985. These efforts resulted in:

- a final rule, making a technical but significant change in the Freight Car Safety Standards to aid in the identification and removal of thermally abused wheels;
- two final rules designed to reduce the regulatory burden on small railroads; and
- a report on rail-highway grade crossing safety following a special safety inquiry regarding possible future courses of action to enhance public safety at rail-highway crossings.

FRA published two Notices of Proposed Rulemaking on the implications of operating freight trains without cabooses. Recent collective bargaining agreements permit railroads to do without cabooses on a large percentage of freight trains. One of these Notices would amend the rear end marker and blue signal rules to (i) clarify the equipping and inspection provisions, (ii) revise the inspection requirement to permit either a visual observation or a radio telemetry verification, (iii) permit expansion of the categories of employees authorized to conduct the visual observation, and (iv) permit the use of a new procedure to protect those making this inspection. The other Notice of Proposed Rulemaking would permit the use of a telemetry device to determine the application and release of the brakes on the rear car of a train during the intermediate airbrake test. We anticipate issuing final rules in both these dockets in the near future.

In other current regulatory proceedings, FRA is examining (i) the safety implications of permitting certain intermodal tanks to carry hazardous materials in Trailer on Flatcar/Container on Flat Car service, and (ii) the appropriate criteria for determining when freight car wheels are defective as a result of excessive heat. In addition, FRA has also prioritized three key safety issues: hazardous materials car placement in a train consist, crew safety in locomotives and radio communications.

In 1985, FRA saw a series of very significant court decisions in defending the Federal rail safety program. With the recent action of the Supreme Court we are now able to implement the alcohol and drug rule. In a suit brought by rail labor organizations challenging FRA's exercise of prosecutorial discretion, the Ninth Circuit Court determined that rail employees and their organizations lack standing to sue FRA to compel it to enforce the rail safety laws in the manner they deem proper. In another serious challenge to the integrity of the Federal safety enforcement program, FRA prevailed in four nearly identical cases related to job losses brought by the Brotherhood of Railway Carmen in various locations across the country. Plaintiffs charged that, as a result of the furlough of carmen, train inspections were now being done by trainmen, whom they alleged to be unqualified. None of the courts found an emergency situation or even serious safety issues to exist, and those that ruled on the issue found that FRA was properly enforcing the law. The courts unanimously ruled that plaintiffs lacked standing to press their non-emergency claims. Two similar cases were abandoned by the plaintiffs after the initial pleadings were filed. FRA also prevailed in district court in a suit brought by rail labor challenging FRA's intepretation of the sleeping quarters provision of the Hours of Service Act.

FRA's current litigation caseload which will continue into the future includes: rail labor's appeal in the alcohol and drug case, challenging the testing provisions; rail labor's appeal of the District Court decision in the sleeping quarters case; a similar sleeping quarters case at the district court level in another jurisdiction; and a railroad's suit challenging FRA's finding that the railroad "knowingly" violated provisions of the Hazardous Materials Transportation Act.

RESEARCH AND DEVELOPMENT

In 1985, following an internal management review determination we moved our research and development activities under the executive direction of the Associate Administrator for Safety. As a result, we propose in our FY 1987 budget to merge the Railroad Safety and Railroad Research and Development appropriations into a single account. This will permit a closer linkage, from concept to implementation, between safety research and the rulemaking process. Some of our major R&D efforts during the past year included research into: the safety of equipment used to transport hazardous materials; the potential problems associated with the increasing use of intermodal transport for hazardous materials; the equipment required for the safe operation of cabooseless trains; and improved safety in the locomotive cab environment.

FRA also has been monitoring advances in the use of new microprocessor- and communications- based train control systems in the railroad industry. Several proposals are being developed by the industry in the hopes of establishing even greater opportunities for improved safety in train movements. In 1986, FRA will continue its review of this important development, as well as study incremental improvements to conventional radio voice communication for train control.

CONRAIL

Mr. Chairman, this past year has been another year of very intense activity in the Administration's efforts to sell Conrail. Shortly before we met with this Committee last year, Secretary Dole had announced that she had chosen the Norfolk Southern to purchase Conrail. During the past year we have testified on numerous occasions before six Congressional Committees on all aspects of the Conrail sale, met with the Governors, or their representatives, of virtually every state served by Conrail, and with many of Conrail's shippers to discuss the implications of the sale.

The Justice Department has reviewed in depth the competitive aspects of the sale and provided guidance to us and to Norfolk Southern as to track divestitures and other market access conditions that must be met to prevent a lessening of competition. The divestiture agreements recently finalized by the Norfolk Southern Corporation with the Pittsburgh and Lake Erie Railroad and Guilford Transportation Industries will not only preserve the current level of competition to meet the Justice Department requirements, but will have the decidedly procompetitive effect in that they break the monopoly that Conrail has enjoyed in providing single line service between the Northeastern and the Midwestern regions of our country. Assistant Attorney General Ginsburg of the Antitrust Division has given preliminary approval of the sale saying that the Norfolk Southern divestiture plan "appears to create long-term viable and competitive service for affected shippers." We are anticipating that Justice will complete its verification review of these agreements this spring and that the Congress can conclude its review and oversight process without delay, in fairness to all the parties involved.

The Department of the Treasury submitted a revenue estimation of Conrail's sale to the Norfolk Southern Corporation. They estimated that under current law, on a present value basis, the Treasury might forego receipts of about $125 million in tax revenues as a consequence of Norfolk Southern's ability to consolidate its tax returns with those of Conrail. This results because Norfolk Southern currently pays significant taxes while Conrail is likely to continue producing net operating losses for tax purposes well into the future.

On February 4, 1986, the Senate passed legislation authorizing the sale of Conrail to Norfolk Southern. The Department considers the Senate's approval of the sale to be a major step forward particularly since the sale would produce in excess of $1.2 billion current receipts at a time when we are working so hard to reduce the Federal deficit.

We expect to complete the sale of Conrail in 1986. Post Conrail activities would include a broad range of duties and responsibilities to assure consistency with all covenants of the sale agreement and legislative mandates. Specific activities would focus on monthly monitoring of Conrail's operating and financial performance, periodic assessment of its cash accounts including cash flow adequacy and quality; review of its track and equipment maintenance expenses, capital improvement program compliance; asset dispositions and acquisitions; dividend policy; requests for waiver, divestiture and diversion trend assessments; service continuation and any other requirements Congress or the Department may ultimately impose.

RAILROAD DEREGULATION

FRA has participated in a number of key proceedings at the Interstate Commerce Commission (ICC), including: rulemakings concerning the adoption of the historic agreements between railroads and shippers resolving concerns with the implementation of regulatory standards in the areas of joint rates and competitive access; and the criteria for judging market dominance.

FRA also provided the Departmental witness on the potential competitive impacts of the proposed merger between the Southern Pacific and Santa Fe Railroads. The Department's analysis and recommendations in that proceeding provided the groundwork for a subsequent agreement reached by the merging railroads to remedy any likely reductions in competition as a result of the transaction. The agreement, which closely follows our recommended solution, was a negotiated private sector arrangement that permits another competitor to solicit traffic from the shippers involved. This arrangement, if approved by the ICC, is a positive example of how parties to a merger transaction can work out competitive concerns within the scope of an ongoing merger proceeding.

In the coming year, FRA will continue to monitor developments under the Staggers Act and conduct analyses to support development of FRA and DOT positions on issues related to rail regulation, including regulatory proceedings as well as legislative initiatives. Projects will range from evaluations of any proposed mergers between railroads, or between railroads and carriers of other modes as they may arise; economic research and projections of the effects of actual and proposed regulatory changes on shippers and the railroad transportation initiatives such as container trains, the use of longer truck combinations on the highways, and increasing rail-barge or rail-truck cooperation and coordination. During FY 1987 priorities will again be placed on legislative comment, including scrutinizing legislative proposals for amending the Staggers Act or supplementing the Act altogether by augmenting the anti-trust laws. Sunset of the ICC will also require substantial effort to effect the transfer to DOT of a major portion of the remaining ICC functions.

RAILROAD RESTRUCTURING

In the past year the Milwaukee Railroad Reorganization Court approved the Soo Line's purchase application. The FRA challenged the Soo Line's original settlement proposal, which would have permitted cash payments to junior creditors ahead of FRA claims. As a result of vigorous defense of the government's claims and FRA negotiations with Soo, an agreement was reached accelerating repayment of debt obligations to the United States on terms and conditions favorable to the government. Detailed financial analyses and valuations were conducted for the CNW/Milwaukee and Soo/Milwaukee potential acquisition agreements as a basis to negotiate terms of repayment of the Milwaukee debt owed to the United States. Other restructuring activities in connection with the Santa Fe-Southern Pacific merger case also included extensive pro forma analyses of applicants and other affected railroads.

UNION STATION

During the past year, the Department signed a development agreement with Union Station Venture, Ltd., designating it as the station's developer. The Union Station Redevelopment Corporation (USRC) signed a sublease of Union Station with the developer for an initial term of 29 years with 5 optional renewal periods of 14 years each. The developer has undertaken the obligation to operate and maintain the station and a sinking fund has been established to assure that future replacement of capital items is funded. This will take Union Station off of the Federal budget sometime in the foreseeable future after the facility becomes operational.

Other progress on the facility includes:

- The District of Columbia Department of Public Works is making good progress on construction of the parking garage which is scheduled for completion in the fall of 1986.

- USRC awarded a demolition contract to clear the way for the construction contract we plan to award this spring. The contractor has removed construction obscuring historically and architecturally valuable features of the building and excavated the foundation for a cinema complex on the lower level.

- Final design for rehabilitation and renovation of Union Station by USRC and for improvements to be made by the developer is to be completed by March 31, 1986.

- We expect USRC to award the main construction contract for rehabilitation and renovation of Union Station in May of this year. (We anticipate that bidders will have the month of April to prepare and submit their bids.)

NORTHEAST CORRIDOR IMPROVEMENT PROJECT

I am happy to report that we achieved a major milestone in NECIP. On September 30, 1985 FRA transferred to Amtrak responsibility for completing the remaining right-of-way improvements under the $2.2 billion Northeast Corridor Improvement Project (NECIP). Under FRA's management, $1.9 billion of the total appropriation was expended. This work has resulted in safer, more dependable and faster corridor service than at any time in the past. Ridership in 1985 was up over 4 percent from 1984 levels. Between 1976, the year legislation authorizing the Project became law, and 1985, ridership increased by 15 percent.

Northeast Corridor traffic is currently 54 percent of total Amtrak ridership.

Track work completed before the transfer included the installation of 410 track miles of concrete ties, 735,000 wood ties and 535 track miles of continuous welded rail, undercutting of 494 track miles, cleaning of 271 miles of shoulder ballast, surfacing of 634 miles of track for high-speed operations, extensive ditching to improve drainage, realigning 22 curves and reconfigurating of 30 interlockings. Eight bridges were replaced, including two that open for marine traffic, while over 150 were rehabilitated/repaired. The notorious B&P Tunnel in Baltimore, opened in 1873, was completely restored. No trains have been delayed at the tunnel since its reopening in the summer of 1984. Fencing was installed at critical locations to limit pedestrian access to the right-of-way. All highway at-grade crossings between New York and Washington were eliminated. A few remain north of New York. Eight of thirteen station projects were completed. (Of the five that remain, four are being built under cooperative agreements among FRA and state or local agencies.) Four new maintenance-of-way bases at strategic locations along the Corridor now dispatch crews to maintain the right-of-way. The electrification, communications and signaling systems have all undergone significant upgrading. Equipment service facilities at Boston, New York and Washington, begun prior to the transfer, will be completed by Amtrak.

During 1986 FRA will:

- Continue the rehabilitation of NEC railroad bridges. Within the State of Connecticut, design and construction work for five bridges is being funded under an agreement between FRA and the State. The bridges are in territory not owned by Amtrak but used by Amtrak trains.

- Complete and dedicate a new station at Providence, Rhode Island. The station, located on a new alignment, is an integral part of the redevelopment of downtown Providence.

AMTRAK

The economic realities that led the Department of Transportation to recommend no funding for Amtrak in last year's budget have not changed, and we request no funding for Amtrak in fiscal year 1987.

Despite significant improvements in its operating efficiency over the past four years, Amtrak continues to lose more than $600 million annually, with no end in sight. These numbers actually understate government's long-term exposure, since the $600 million figure is comprised almost entirely of operating losses. Amtrak faces significant capital investment needs over the next few years, needs which the federal government would also be asked to finance. At a time when we must work together to meet the essential deficit reduction targets in Gramm-Rudman-Hollings, the federal government simply cannot commit more than $3 billion to subsidize Amtrak's operating losses over the next five year budget cycle.

Termination of Amtrak subsidies does not in and of itself mean an end to Amtrak service. It is essential, however, for those interested in continuing Amtrak service to be realistic about the choices, and their need to take the initiative should they wish to maintain service in the absence of federal financial support. Amtrak cannot be run without subsidy. While changes in work rules and operating procedures could enable Amtrak's losses to be reduced, subsidy needs would remain substantial even under the best of circumstances. I said a year ago that FRA would devote its full energies, as well as its analytical and intellectual resources, to working with states, localities, regional or private groups to develop a transition plan should they wish to step into the federal government's role as subsidizer. That offer still stands, and we are sincere in our offer of logistical assistance should any group wish to take that initiative.

Should no party step forward to replace the federal government as subsidizer of Amtrak services, the corporation would, in all likelihood, declare bankruptcy, and a Trustee would be appointed to manage its affairs. As in any other bankruptcy proceeding, the Trustee could be expected to seek preservation of service in areas where any private party or regional compact offered to take responsibility for Amtrak operations. In other cases, the assets would be applied to the obligations of the estate. Without total subsidy termination and the opportunities offered through liquidation of the Amtraks assets, the Federal government would continue to pour billions of dollars more into Amtrak.

One fact is clear -- that in the face of annual deficits approaching $200 billion, the federal government cannot continue to invest more than one-half billion annually in Amtrak operating subsidies.

Mr. Chairman, I have given the Committee a look at perhaps ten of the major accomplishments of FRA which were highly visible over the past year. There are dozens more significant administrative, technical and personnel achievements that time doesn't permit me to itemize, although that does not diminish their importance. I do want to add that no organization could survive without the kind of dedicated people that persevere in their daily work behind the scenes -- some call it the trenches -- and whom others rarely see or hear.

Mr. Chairman, I will now discuss my budget request for FY 1987.

FRA's budget request for FY 1987 encompasses $50,491,000 in budget authority plus $6,875,000 of unobligated balances to support the current operating level in FY 1987, and 660 permanent positions. The detail by appropriation follows.

OFFICE OF THE ADMINISTRATOR

The request for the Office of the Administrator appropriation is $10,958,000 in budget authority plus $5,875,000 of unobligated balances transferred from other accounts. With many of FRA's Federal financial assistance programs being eliminated or phasing down, it is proposed to merge the personnel and activities previously carried under "Rail Service Assistance" with the Office of the Administrator account.

The request for the "Salaries and Expenses" activity of $11,033,000 includes $9,723,000 in budget authority and $1,310,000 of unobligated balances from the Rail Service Assistance appropriation to support 196 permanent positions, a decrease of 8 positions from the comparable FY 1986 level; these positions are associated with Amtrak activities for which we are requesting no funds in FY 1987.

The request for "Contractual Support" of $1,180,000 in budget authority is primarily computer related costs for economic analyses and forecasts, monitoring railroad traffic and the financial condition of the railroad industry, and special studies associated with mergers, deregulation and reregulation and Interstate Commerce Commission regulatory proceedings.

For FY 1987 we are requesting $4,620,000 for Washington Union Station rent and maintenance, of which $4,565,000 will be transferred from Conrail Labor Protection unobligated balances. Of this amount, $3.5 million will be available for the rental payment and $1,120,000 will be available for maintenance, operation and security services.

RAILROAD SAFETY

The FY 1987 budget continues to emphasize FRA's safety mission with enhanced resources to further improve our capabilities in regulatory and enforcement activities. The FY 1987 budget combines Research and Development with Railroad Safety in a request for $35,819,000 in budget authority, plus $1 million carryover and 464 permanent positions. This is a net decrease of $895,000 in budget authority and an additional six positions from FY 1986 levels.

FRA's request of $22,364,000 for Federal safety enforcement will provide for 385 field personnel positions, an increase of 6 positions. Federal enforcement of railroad safety regulations and standards have undergone extensive adjustments over the past four years to accommodate dramatic changes in the industry brought about by economic deregulation and system restructuring. These organizational and technological changes in industry operations have created new demands on FRA field offices, such as the National Inspection Plan, Systems Inspections, Safety Conferences with railroad management and labor representatives, and special training and counseling programs. So that we may manage these additional demands more effectively, FRA is requesting additional positions for five Deputy Regional Directors and one training specialist in alcohol and drug abuse.

The remaining Safety program funding will provide $1.2 million to permit continued operation and maintenance of one automated track inspection vehicle over 25,000 miles of track; and $3,674,000 in headquarters support to be used for maintaining 64 headquarters personnel positions and to upgrade accident and regulatory analysis capabilities. Although FRA proposes to eliminate the Federal cost-sharing portion of the State inspection program, we will continue to train state inspectors and coordinate State inspection plans with national programs. In FY 1987 we will continue systemwide and task force assessments to address safety problems of a systemic nature. We are proceeding on phase two of a contract that will enable us to assess high risk areas and deploy our inspector resources more effectively.

For FY 1987, $9,581,000 and 15 permanent positions are requested for the Research and Development activity. This will enable FRA to continue support of safety rulemaking activities with essential research concerning track, equipment, operations, hazardous materials, and track-train testing. The recent quantum advances in railroad technology and operations present FRA with the need to focus resources on evolving new technologies and more sophisticated railroad operations. We will continue to work to anticipate safety problems and mitigate threats to public safety in advance of the occurrence of potentially catastrophic accidents. Our current and planned research in areas such as nuclear waste casks, hazardous material tank cars, wheel safety testing, vehicle safety testing, and emergency response procedures, are prime examples of the new direction we have taken in our R&D program. Where such research yields a collateral economic benefits to the railroad industry, we will continue to work with the industry and the Association of American Railroads to bear a share of project expenses.

FEDERAL FINANCING BANK, DIRECT LOANS

This year, each agency's budget must reflect the agency's guarantee of direct loans made by the Federal Financing Bank (FFB). For FRA, the FFB disburses direct loans to private freight railroad companies backed by FRA's guarantee of the loans under Section 511. In FY 1985, FRA made commitments to guarantee $2.5 million in loans by the FFB and in FY 1986 we expect to make commitments to guarantee $3.8 million. The budget authority in this account, $1.6 million in FY 1986 and $3.8 million in FY 1987, represents the cash drawdowns that we anticipate will be made against the Section 511 loans guaranteed by FRA.

GENERAL PROVISIONS

Section 310 of the Department's General Provisions would authorize the Secretary to sell Union Station to the private sector. We now hold Union Station under a long-term lease from subsidiaries of Penn Central and CSX. In order to redevelop the Station we will have to acquire title to it by buying out the owners' interest. Section 310 would not disturb any existing agreements with the Union Station Redevelopment Corporation, the developer, Amtrak and the District of Columbia. Authorizing legislation is contained in Section 137 of H.R. 4144, the Surface Transportation Reauthorization Act of 1986. Acquisition of the facility and the proposed future sale would be subject to approval of the Appropriations Committees.

Mr. Chairman, this completes my prepared statement. I will be happy to answer any questions the Committee may have.

Mr. LEHMAN. Thank you both very much. GENERAL QUES-

AMTRAK TRANSFER NEGOTIATIONS

Mr. LEHMAN. The administration's Amtrak proposal is, of course, a carbon copy of last year's proposal, which I might add, was soundly rejected by Congress and the American people.

Since we thoroughly reviewed the impacts and consequences of this proposal last year, I frankly do not see the need to revisit all of these same issues again.

Instead, I would like to focus on the developments and changes that have occurred since last year.

First, Mr. Riley, the Secretary told us last year that much of Amtrak's service can and should be financed at the state and local level. She directed you to undertake negotiations with the states to facilitate such transfers, which I understand went nowhere.

She told us three weeks ago that she again has directed you to undertake such negotiations. Would you explain in more detail how those negotiations progressed last year, and tell us what the prospects are for gaining a more favorable response this year?

Mr. RILEY. Mr. Chairman, after the hearing a year ago, I invited a number of representatives from Northeast commuter agencies and State departments of transportation in the Northeast quadrant of the country to meet with us in Washington and they did. I would describe the meeting as a frank one.

We told them what the budget scenario was and expressed our view that whether one liked or disliked our budget recommendation, that the declining budget ceilings would sooner or later force an end, or a substantial reduction in Amtrak subsidies, and we counselled the States to think very seriously about what they would do in that scenario.

And we urged them to work with us to work out an alternate plan, where, if they chose to do so, and it is their choice, they could elect to step into the Federal government's role as subsidizer.

Their response was virtually uniform; that they were opposed to the cutbacks, they intended to strongly oppose them in Congress, and that any action to cooperate with the Department of Transportation in creating a contingency plan would be inconsistent with their primary position, and that they did not wish to engage in that type of cooperation.

I made subsequent efforts to meet with some of the States west of the Mississippi but found basically the same position.

Now two points, two observations on that; three, really. I can understand that position, given the position that the States and the commuter agencies took on funding, but I am not sure that it is a very wise one, because the creation of a contingency plan is probably Amtrak's best insurance policy for the future.

Second, that was in the pre-Gramm-Rudman-Hollings era, and I think that the representatives from the States and localities felt that there was very little chance that there would be a substantial reduction in Amtrak funding.

I do not sense quite the same faith that nothing will change this year, and I am hopeful that that will be more of an incentive to cooperate in creating a contingency plan.

But I have to emphasize that we cannot tell Amtrak stakeholders that they should step into our role as subsidizer, nor can we propose that.

It is essentially their choice, and, what I said in my opening statement really is where we are. That we have reached a fundamental decision that the Federal government cannot continue to afford Amtrak.

If in fact there are other stakeholders whether at the State level or any other level, who wish to step into our role, we will work with them, but it is essentially their choice to take that initiative or not take it. I will, however, reinitiate the types of contacts that I made last year, and you have got a pretty complete report on what came out of those conversations now.

Mr. LEHMAN. Thank you. Mr. Claytor, what is your assessment of the likelihood of states and localities agreeing to fund all or part of your service, especially along the Northeast Corridor?

Mr. CLAYTOR. I really concur in what Mr. Riley has said. I do not foresee any significant possibility that any significant part of the Amtrak system will be maintained by States, local entities, or by the commuter agencies.

The Northeast Corridor States and commuter agencies are pretty well strapped in attempting to maintain their commuter services as they are, and I just do not think there is any chance in the world that they can step into the breach, or that any of the States, including those off corridor, are likely to do so.

I agree with what Mr. Riley said in his opening statement, that if Amtrak funding is terminated, the only result is going to be the bankruptcy of Amtrak and the liquidation of the whole operation.

FEDERAL AMTRAK RESPONSIBILITY

Mr. LEHMAN. Mr. Riley, Amtrak is a national carrier that provides primarily interstate transportation service.

In my view, promotion of interstate commerce is one of the most important and basic premises of the federal transportation policy. And to my knowledge, neither the President nor the Secretary have repudiated this basic policy premise.

In fact, this Administration has made a bigger issue out of federal transportation roles and responsibilities than perhaps any other administration since DOT was founded. But the administration seems to want it both ways. They want to cripple mass transit because it is said to be a local or regional responsibility.

But, in the same budget they propose to transfer the responsibility for supporting a national system like Amtrak to the states and localities as well.

It appears to me that, instead of fashioning a budget around certain policy principles, the state and local governments are being used as an easy and convenient dumping ground for programs the Administration simply does not like.

Would you explain more fully why Amtrak service should now become a state or local responsibility?

Mr. RILEY. We are not proposing that the states and localities take control of Amtrak. It is not a transfer proposal. Our position is different.

What we are saying is that the federal government, in its fiscal situation, cannot afford the roughly $3 billion in commitments we would have to make to this program over the next five years. Now, the reality is that if the federal government does not finance it, the only other place it can go is back to its stakeholders, and we have not proposed that the states do that.

What we have said, however, is that if the states wish to do it, we will work with them to create a transition plan and allow them to use our logistical resources to do so.

If you think about it, Amtrak stakeholders can be defined in a relatively tight circle. States, localities, commuter agencies who would incur over $200 million in additional costs if Amtrak ceased to function.

Amtrak employees and those who ride it. You have drawn within that circle, the list of those who could or would, through some form of contribution, either at the farebox, or in changes in working agreements, or in direct subsidies, step into our place.

We are not suggesting or proposing that any of them do it. What we are simply saying is that our proposal is not stemming from a desire to kill a program we do not like.

It stems from a fiscal recognition that we cannot afford to subsidize its half billion dollars in annual losses, and if others would like to step in to do that, we will work with them; if they do not, that is their choice. But the fact that the other stakeholders do not want to subsidize the program is not a compelling argument for federal subsidy.

And I just have to add that at the end of fiscal year 1985, the NCSL reported that states had surpluses of $5.2 billion, plus rainy-day funds of $3.7 billion, for a total of $8.9 billion in surplus funds.

That is more than ten times what Amtrak has requested and substantially more than what the federal government has in surplus funds.

But I really do want the record to be clear on this. Our decision is a fiscal one and stems from our belief that the Federal government should not be subsidizing large operating losses for the Amtrak transportation system.

We will, however, work with any other stakeholders, state or otherwise, who would be interested in stepping into our shoes.

Mr. LEHMAN. Mr. Claytor, do you care to comment?

Mr. CLAYTOR. Mr. Chairman, as I said before, my judgment is that none of the stakeholders are in a position to step in and operate any significant part of the Amtrak system, and I personally do not think it will happen.

That is purely a subjective judgment factor based on the last several years, when I have been dealing with both a number of the states and with the commuter agencies. I just do not think it will happen.

I think the only solution, the only result of discontinuance of federal funding is that Amtrak will be liquidated.

Mr. LEHMAN. Mr. Coughlin.

PROPOSED INTERSTATE COMPACT

Mr. COUGHLIN. Thank you, Mr. Chairman. It does seem like we could have taken last year's testimony and reprinted it, because we are talking about exactly the same things that we were talking about then.

I do not see any interstate compact that has been developed since last year, that would provide for the continuation of Amtrak by the State and local level.

Are you aware of any interstate compact that is in the wind?

Mr. CLAYTOR. No, I am not, sir.

Mr. COUGHLIN. Are you, Mr. Riley?

Mr. RILEY. I am not sure what is in the wind. I do not know of one that exists, but we have——

Mr. COUGHLIN. Or of one that is even proposed?

Mr. RILEY. Well, I would answer the question this way. We made the offer a year ago, to work with the States if they chose to pursue that course. Now, I thought, frankly—and I have to concede that there was some legitimacy to the objection the committee raised a year ago, that the States had fairly short notice between the time that we came forward with this proposal and the end of that fiscal year.

That argument did have validity last year; it does not this year. Our position on this issue has been known now for two years, and I can only say that the offer I made a year ago to work with anyone who would like to put such a compact together still stands and we would devote the time to do it.

But that is a choice that the other stakeholders have to make, and if it is their view that they do not want to subsidize the service, I do not know that that strengthens the argument for Federal subsidy. I think it weakens it.

Mr. COUGHLIN. Did you propose any sort of interstate compact?

Mr. RILEY. I did as a matter of fact. When we met with the State representatives—and I think I testified to this in my opening statement. When we met with the State representatives, we said we would work with them in formulating a type of compact, and in defining the cost implications of it, and how it would have to be structured, because we are the subsidizer. We are in the best position to tell anyone else who would like to do that how to structure their role. But their position was that they were opposed to the cutback in funding, strongly opposed to it; that any action taken to create an alternate funding system would undercut their position, and that they were not going to do it. And I think that was an honest answer on their part.

In fact I think it was a very honest meeting.

Mr. COUGHLIN. I mean, this is an interstate operation, and so it is not as if some particular State or locality can step in there.

Mr. RILEY. No, it would have to be done on an interstate basis, and I think it would have to originate in the Northeast Corridor for this reason.

While the per State operating cost outside of the Northeast Corridor is quite low, and, it really is not—I mean, comparatively, it was in the—you know—$8 to $9 million range.

The Northeast Corridor has the unique situation where the commuter agencies and freight railroads gain so much benefit from Amtrak's presence because of the services it supplies them, that it would cost them in excess of $200 million to run, if Amtrak were not there.

And that special financial situation tells me that if a compact can be spawned, it would be in the Northeast Corridor and then work outward. If it cannot be spawned in the Northeast Corridor, it probably cannot be spawned anywhere; but that is really a decision that others have to make, and we are here if they elect to do so.

EFFECTS ON COMMUTER SERVICE

Mr. **Coughlin**. What you of course are saying is that failure to fund Amtrak creates a double whammy, is that correct? Not only do we lose the rail passenger service, but we affect the other commuter rails in the Northeast, as well, very adversely.

Mr. **Riley**. What I am saying is that through Amtrak, the commuter rails are in effect receiving subsidy of about $200 million to $214 million, and I think one can debate where that figure lies because it is very difficult to calculate, but it is in the $200 million range.

And it really cuts two ways. Yes, they are receiving an inverse subsidy. At the same point in time, if the operating subsidy for Amtrak is at the $200 million level, it is cheaper for them to keep the system going by subsidizing it than it is for them to let it go, and they would have to make the choice whether to do that, or not.

But that is the number reality; they get about $200 million in benefits from Amtrak being there. So Amtrak is in effect subsidizing them.

Mr. **Coughlin**. Mr. Chairman, there are other questions here that I know the committee has and I will yield at this time.

Mr. **Lehman**. Mr. Durbin.

FEDERAL AMTRAK RESPONSIBILITY

Mr. **Durbin**. Thanks, Mr. Chairman. Mr. Riley, I agree with the statement made earlier, that this is a rerun of what we did last year. I do not think the issues have changed much, and I still find it incredible that you are suggesting to us that the Administration's approach to Amtrak, in your words, does not mean an end to service.

The State of Illinois is not prepared to take over Amtrak. Our Republican governor, one of the loyalest friends of President Reagan, has never stood for that proposition, or raised his hand and said, "Let me show you, Mr. President, how we can do this with volunteerism and State initiative."

In fact, the new wrinkle this year is your suggestion that Amtrak could go through a little Chapter 11 bankruptcy, and when it is all over, the pieces of Amtrak that may hold out some profit will somehow magically appear.

Of course we all concede we would, in the process, lose any dedication or commitment to a national transportation network for passengers. It would be gone. It could not survive.

You do really think it could survive, do you?

Mr. Riley. Amtrak cannot run without subsidy, and the bankruptcy that I referred to in my opening statement was not a Chapter 11. I do not see how the company could do a Chapter 11, if in fact none of the stakeholders chose to step in and subsidize her. I think it would go into a liquidation bankruptcy, and the liquidation bankruptcy might in fact sell off some portion of the system to continue operation.

Perhaps the Northeast Corridor, perhaps the Auto Train, perhaps Minneapolis to Chicago——

Mr. Durbin. And what about the rest?

Mr. Riley [continuing]. But it would not operate as a national system.

Mr. Durbin. It would be gone; there would not be a national system. Let's be honest about it; you cannot have it both ways. We either have a Federal commitment to a national passenger transportation system or we do not have one.

Mr. Riley. I said in my opening statement that one must be realistic about the choices and that is clearly one of the choices. There are a small number of people who control, or contribute to, or could affect Amtrak's costs. Either those people step into the role and replace us by altering the cost, or by subsidizing their continuance, or the system just does not exist on a national basis. Those are the only two choices.

AMTRAK PERCENTAGE OF TOTAL BUDGET

Mr. Durbin. It troubles me when I hear you say that we just cannot afford, as a nation, to spend $3 billion over the next five years to have a passenger transportation system. I would like to put that in the context that over the next five years, we will probably spend as a Federal government, as a nation, $5 trillion.

What you are saying is that we cannot afford six-tenths of one percent, assuming that Amtrak does not improve their revenue picture, over the next five years.

Do you really believe that?

Mr. Riley. The $170 billion deficit is made up of a lot of six-tenths of one percents, and in this case, the Amtrak's total ridership is less than the vacant capacity of the competing transportation modes, and I think that is the issue that has borne on the Administration in looking for areas where you can get that deficit down without raising taxes.

COMMUNITIES SERVED BY AMTRAK

Mr. Durbin. Well, I am not in favor of raising taxes either. But when the President presents a budget to this Congress that calls for $31 billion in new defense spending, a 12 percent increase, and $21 billion in domestic cuts, it suggests to me that the President can find plenty of money for the most important things he wants in the budget. But when it comes to Amtrak and basic passenger transportation service, and the communities that have no alternative—and there are many of them, funds are no longer available.

Mr. Claytor, is it not true that Amtrak serves over a hundred communities that have no other form of transportation available?

Mr. **Claytor**. Yes, sir, I think that is right. We have the figures and have submitted them for the record.

Mr. **Durbin**. I think, if I look at my State of Illinois, I can find plenty of communities that will suffer dearly if we eliminate Amtrak service.

It is a matter of priorities, Mr. Riley. We are all faced with this budget deficit.

But this Administration has said that the priorities begin and end at the Pentagon. There are a lot of us who think national security involves an integrated national transportation network as much as weapons systems.

Mr. **Riley**. There are vacancies on Amtrak's competing modes that can pick up its slack; the same thing cannot be said of defense.

But on the cities that Amtrak serves and does not serve, we did an analysis of that and we will be glad to submit that. It is too long, verbally, to put it into the record but, I will be glad to put it into the record in writing. What we found was that there are only three communities on the Amtrak system, where there is not today, even with Amtrak present, bus service within a 20-mile radius, and that is with Amtrak present.

If in fact there is sufficient demand to justify Amtrak service in those communities, then it will bring bus service in.

Because you cannot assume that the service patterns of competing modes will be the same after Amtrak, as they are today but let me submit all of that for the record because that is a rather lengthy document and I do not pretend to have it all in my head.

Mr. **Durbin**. I would be anxious to see it.

[The information follows:]

ALTERNATIVES TO AMTRAK SERVICE IN COMMUNITIES NOW SERVED BY AMTRAK

Purpose: Amtrak has contended that, if service were completely discontinued, many local communities would be without any form of public intercity transportation. This study sought to examine that contention by identifying, for every Amtrak station listed in its Spring 1985 schedule, what alternative service was available. The study focused on bus service, since buses provide by far the most extensive service of any transportation mode in the country.

Methodology: A two-step methodology was used. The first step was similar to what Amtrak did, and produced similar results. Amtrak's schedule was compared to the March 1985 Official Bus Guide, and 86 communities were found where Amtrak provided service, but no community with the same name was listed as receiving bus service. Those communities are listed on the following attachment.

The present study, however, went a step further, and examined bus service in nearby communities. For example, New Carrollton, MD is not listed in the Bus Guide, but there is intercity bus service available in both the District and in Silver Spring. The study therefore used a Rand McNally Road Atlas to identify, for each Amtrak station, whether there was a community nearby (within about 20 miles) which was served by intercity bus.

Results: The study found that, when nearby communities were also considered, there are only three Amtrak stations not now also served by intercity bus. Those towns, their 1980 populations, and the number of Amtrak riders who boarded or disembarked in FY 1984, are as follows:

Towns Without Bus Service if Amtrak is Discontinued

Town	1980 Population	FY 84 Amtrak Riders (On & Off)
Caliente, Nevada	982	856
Creston, Iowa	8,429	6,302
Delta, Utah	1,930	-0-
TOTAL 3	11,341	7,158

The following attachment lists the 86 communities without bus service under the same name, whether there is nearby bus service, and the name of the nearby town.

TOWNS NOT LISTED IN BUS GUIDE 1/

TOWN	NEARBY TOWN 1/	BUS SVC.?	TOWN	NEARBY TOWN	BUS SVC.?
Alderson, WV	Lewisburg, WV	Yes	Kewanee, IL	Geneseo, IL	Yes
Alton, IL	St. Louis	Yes	LaGrange Rd, IL	Chicago, IL	Yes
Ardmore, PA	Philadelphia	Yes	Lee Hall, VA	Williamsburg, VA	Yes
Bingen-Wh Salmon, WA	The Dalles, OR	Yes	Lorton, VA	Alexandria, VA	Yes
Browning, MT	Glacier Park (Cut Bank)	Yes	Malvern, PA	Paoli,PA	Yes
Brunswick, MD	Frederick, MD	Yes	Manassas, VA	Fairfax, VA	Yes
Bryan, OH	Defiance, OH	Yes	Marceline, MO	Brookfield, MO	Yes
Bryn Mawr, PA	Philadelphia	Yes	Martinsburg, WV	Hagerstown, MD	Yes
Cache Jct, UT	Logan, UT	Yes	Maysville, KY	Ripley, OH	Yes
Caliente, NV	--	-	McKeesport, PA	Pittsburgh, PA	Yes
Carlinville, IL	Litchfield, IL	Yes	Metropark, NJ	Plainfield, NJ	Yes
Chillicothe, IL	Peoria	Yes	Middletown, PA	Harrisburg, PA	Yes
Clemson, SC	Anderson, SC	Yes	Milford, UT	Beaver, UT	Yes
Connellsville, PA	Uniontown, PA	Yes	Monroe, VA	Lynchburg, VA	Yes
Crestline, OH	Mansfield, OH	Yes	Mount Joy, PA	Lancaster, PA	Yes
Creston, IA	--	-	Mystic, CT	Groton, CT	Yes
Croton-Harmon, NY	Ossining, NY (White Pl.)	Yes	New Buffalo, MI	Michigan City, IN	Yes
Delta, UT	--	-	New Carrollton, MD	D.C.	Yes
Dyer, IN	Hammond, IN	Yes	North Haven, CT	New Haven, CT	Yes
E. Glacier, MT	Glacier Park	Yes	Old Saybrook, CT	New London, CT	Yes
E. Greenwich, RI	Providence, RI	Yes	Overbrook, PA	Philadelphia, PA	Yes
Edmonds, WA	Seattle, WA	Yes	Parkesburg, PA	Coatesville, PA	Yes
Elizabethtown, PA	Harrisburg, PA	Yes	Port Henry, NY	Ticonderoga, NY	Yes
Enfield, CT	Hartford, CT	Yes	Port Kent, NY	Plattsburg, NY	Yes
Essex Jct, VT	Burlington, VT	Yes	Prince, WV	Beckley, WV	Yes
Ft. Edward, NY	Glens Falls, NY	Yes	Rockville, MD	Silver Spring, MD	Yes
Ft. Ticonderoga, NY	Ticonderoga, NY	Yes	Rt. 128, MA	Boston, MA	Yes
Fullerton, CA	Anaheim, CA	Yes	Rye, NY	Stamford, Ct	Yes
Gaithersburg, MD	Silver Spring, MD	Yes	Schriever, LA	Thibodaux, LA	Yes
Glenview, IL	Skokie,IL	Yes	Shoshone, ID	Twin Falls, ID	Yes
Harpers Ferry, WV	Frederick, MD	Yes	S. Portsmouth, KY	Portsmouth, OH	Yes
Hinkle, OR	Hermiston, OR	Yes	Sturtevant, WI	Racine, WI	Yes
Hinton, WV	Beckley, WV	Yes	Thompson, UT	Crescent Jct, UT	Yes
Huntingdon, PA	Tyrone, PA	Yes	Thompsonville/ Enfield, CT	Hartford, CT	Yes
Indiana Harbor, IN	Gary, IN	Yes	Thurmond, WV	Beckley, WV	Yes
Iselin, NJ	Plainfield, NJ	Yes	Toccoa, GA	Cornelia, GA	Yes

1/ No more than about 20 miles from towns not listed in bus guide.

TOWN	NEARBY TOWN	BUS SVC.?
Treasure Island, FL	St. Petersburg	Yes
Tri St. Sta. KY	Ashland, KY	Yes
Wallingford, CT	New Haven, CT	Yes
Wayne, PA	Paoli, PA	Yes
Westerly, RI	New London, CT	Yes
Westport, NY	Elizabethtown, NY	Yes
W. Quincy, MO	Quincy, IL	Yes
Whitford, PA	Paoli, PA	Yes
Whiting, IN	Chicago, IL	Yes
Wildwood, FL	Leesburg, FL	Yes
Willsboro,NY	Elizabethtown, NY	Yes
Windsor, CT	Hartford, CT	Yes
Windsor Locks, CT	Hartford, CT	Yes
Wishram, WA	The Dalles, OR	Yes

FEDERAL BUDGET PRIORITIES

Mr. **Durbin**. Someone once said that you can judge a person's values by where they put their treasures. I think that really comes through clearly on this policy decision. Although I am sure you were not consulted on how much could be spent on the Department of Defense, it must be painful for you, in your position in the Federal government, to sit here, and suggest that we cannot afford to spend $3 billion over the next five years to preserve a national rail passenger system, when you look at the prospects of $5 trillion in Federal spending.

I personally believe that we need this commitment. When you consider the negative impact that eliminating Amtrak would have on rural America, where I live, and on college students who are already taking a cut in college loans under the President's budget, who depend on Amtrak service, I would suggest to you that we ought to be able to support this system, as we do every other transportation system in America.

Thank you, Mr. Chairman.

Mr. **Lehman**. Mr. Pursell.

BUDGET DEFICIT

Mr. **Pursell**. Mr. Chairman, I cannot help but comment that I share some of the feelings of my colleague from Illinois, but I do not think the President expects an increase in the defense budget this year. It is a negotiating position. Many of us would like to see further reductions.

But it is a fact that we are borrowing approximately 20 percent of our revenue. We do have a major deficit, and everybody is going to have to take their fair share. I do not know how we can preserve the Amtrak program.

I have always been a supporter of Amtrak. I have a good mix of constituents who use Amtrak services, but I think last year, we were what? $616 million. We dropped it to $606 million, is that right, in a continuing resolution?

Mr. **Claytor**. $591 million.

Mr. **Pursell**. Was that the final, bottom line?

Mr. **Claytor**. Yes.

IMPACT OF GRAMM-RUDMAN

Mr. **Pursell**. What would happen if we do not write a budget this year and Gramm-Rudman triggers in in the fall, in October? What impact does that do to the present system if we were to——

Mr. **Claytor**. Until I see the amount I cannot tell whether we can survive at all. The chances are pretty good that we will not survive at all. But if we could survive it would only be by very drastically cutting the service throughout the country, which we would be able to do only if the existing Reconciliation Bill is passed, which confirms that we can change frequencies without incurring labor protection.

SERVICE REDUCTIONS

Mr. PURSELL. When you say cutting services, are you talking about closing down the inefficient lines?

Mr. CLAYTOR. I am talking about decreasing frequencies. We could not discontinue any service without triggering labor protection, which would initiate a cost that would be greater than the savings you would make from discontinuing the service.

So all we can do would be to reduce frequencies, say, from daily to three times a week. Where there are multiple frequencies between cities, you cut those back to just one, or more. But this would destroy, basically, our long-range program to continue to increase our revenues and reduce our costs.

We might get by for one year with something like that, and I am not at all sure we could; but that would be a very close question.

But if we did, it would take five years for Amtrak to get back on the track again and start making the progress we are making in increasing our revenues and decreasing our costs. So I think it would be an extremely costly thing to try to do.

AMTRAK CONTINGENCY PLAN

Mr. RILEY. A comment I would like to add on that. Apropos of what Graham said about Amtrak's probable inability to survive the next Gramm-Rudman ceiling—and I say this, you know, without direct reference or regard to our differences on budget numbers today.

For those who want this to be subsidized, who support the system, and want its service to continue, when you consider testimony of the type Graham just gave, I have to suggest that wisdom suggests that in addition to voicing their personal views, those people should be working to set up a contingency plan, if in fact there is one.

As an administrator I am used to playing whatever hand gets dealt me on a whole wide range of issues. One must administer whatever budget levels are handed to you.

But I have worked hard and Elizabeth has worked hard, to try to think out what one could do in a contingency planning sense, should the system be zero-funded, as we advocated that it must be.

And I really believe that we should not be the only two people in America working on that, and I think people who advocate Amtrak's services want them, want to continue to use them, while they are up here differing with our position on the budget, it would be wise for them to also be thinking about contingency plans, and work constructively with us to see if in fact there is one. And there may not be.

But to put energies into seeing if in fact there is one.

EFFECT OF GRAMM-RUDMAN

Mr. PURSELL. It seems to be an all or nothing kind of a game we play, and Congress, obviously, historically, has been on a real gridlock with the inability to make any kind of an alternative decision, for better or for worse.

Consequently, we end up with Gramm-Rudman, which is probably the worst case scenario. But it is not the President, in my opinion, it is Congress that appropriates the money. It is our responsibility to find alternatives and try to salvage what I think is—and I share with my colleague—a good program.

But the economics are just not there. I wish there was a way that we could maybe scale it down somehow, and run the cost-effective efficient lines and let it grow slowly over a period rather than start at the bigger scope and have to cut back all the time.

It seems like a lot of transit lines get into trying to do too much and provide too much service, and consequently, they are underfunded and over-extended. Now I understand you are putting a freeze on your maintenance program. Well, that is just broad-based. That just seems to be a way of saying it is all over in the long-term, because you have to have a decent maintenance program to keep your line in good quality service.

I do not know the answer. It just seems that as Members of a policy-making committee, we do not have options.

I know a military officer who used to get three or four courses of action to look at to make a good basic policy decision. In Congress it is not that way; it is either yes or no.

It is really an unfortunate set of circumstances in which we cannot find, from either the agency or policy-makers, alternatives of a better way to finance something that obviously is close to bankruptcy.

I just think it is an unfortunate situation. I am sorry I do not have a solution, I wish some of us did here, but——

Mr. **Riley.** I think you express some of the dilemmas we felt very, very well.

Mr. **Pursell.** Well, thank you, Mr. Chairman. I have no more questions.

COST CUTTING MEASURES

Mr. **Lehman.** Okay. Mr. Riley, Secretary Dole also told us three weeks ago that you have been directed to work with Amtrak to come up with a package of legislative and management measures to significantly lower Amtrak's operating costs and generate more revenue.

What specific changes do you have in mind and how much is each worth to Amtrak?

Mr. **Riley.** We have had, I think, productive and constructive discussions with Amtrak in getting the basic data needed to set up a formula by which to do these estimates.

I can run down some of the ideas we have generated with the committee this morning, because while we have set up the formula, we have not run out all the numbers.

I do not want to give you exact numbers that I then would have to change. I can give you some ballpark estimates, a sense of what it all adds up to.

What we are trying to do here, obviously, to see if one could get the losses down to the point where it could run in the absence of Federal funding. Where the loss level goes below that $200 million to $215 million threshold, where, for example, if it cost $100 million to keep Amtrak going, it would be cheaper for the commuter agencies and the States to do that, than to let it go.

WAGE FREEZE

We have discovered that if you instituted a one-year wage freeze on Amtrak, you could probably make a permanent savings of about $30 million from a one-year wage freeze.

I will not put dollar figures on the remainder of the items because we are still calculating them, but I will give you a ballpark estimate.

FREQUENCY AND ROUTE CHANGES

There are a number of, as Graham indicated, frequency alterations one could make, and there are ways that certain routes which run in close proximity to one another could be combined.

WORK RULES

We have always advocated expansion of the Auto Train rules throughout the system. I have to compliment Amtrak management for working aggressively to achieve these savings and I have to compliment labor in working with them to try to get it done. And they have made some progress on that. In addition, one could determine the feasibility of merging train crews with onboard operating crews.

Amtrak essentially has two crews: a train crew and an onboard operating crew. And I think we have to face, with costs being what they are, whether there is not an overlap there that could be merged down to cut the operating cost.

FOOD SERVICE

I believe that we have to face the tough issue of contracting out food services. Amtrak loses money on its food services and we lost the calzone. I think there are potential savings involved in contracting out food services and we are working with Amtrak to determine what that might be.

RESERVATION SYSTEM

One can also question whether we might be able to reduce somewhat the scope of the reservations system and cut some of the costs involved in their reservations services.

RETIREMENT SYSTEM

We also believe that if new Amtrak employees were covered by social security rather than railroad retirement, that very small step would save the company at least $4 million a year, and that would be an escalating figure if you go out into the future, and that really becomes big money as you get into the out-years.

CONSOLIDATION OF MAINTENANCE FACILITIES

There are some consolidations that could be made in maintenance facilities.

SLEEPER SURCHARGE

There is also a possibility that demand may not be quite as elastic on sleepers as it is on other services and it may be possible to put a surcharge of some percentage on sleeper service to raise additional revenue, and you have got to judge that very carefully, because obviously, at some point, you do hit the elasticity curve and you lose passengers.

But sleepers are overbooked today, substantially overbooked, and there may be some additional revenue opportunities on sleepers.

AUTO TRAIN

In addition, we are looking at giving Amtrak something that Amtrak has advocated: The right to haul unaccompanied autos on the Auto Train.

403 (b) AND (d) SERVICE

Other things could be done. We have talked about having the States reimburse Amtrak for all losses on the so-called 403 (b) and (d) trains, and we know that would generate about an extra $18 million a year which is a significant number.

FULLY ALLOCATED FREIGHT COSTS

In addition, I think that Congress has begun to take some constructive strides in this respect. I argued last year, and I will say again, that Conrail, Guilford, and the commuter agencies who benefit from Amtrak's presence, do not pay fully allocated costs to use the Corridor.

They are getting a better deal than they would get if they were running on another railroad's tracks, and if we simply brought them into parity with the type of expenses they would face to run on another railroad's tracks, you could probably raise an additional $38 million a year, and again, this is real money. Now there are harder and more sophisticated, difficult things to do.

I think one could look at the structure of the Amtrak police force and see if savings could possibly be made there.

TRACK AND STATION REDUCTIONS

Amtrak also owns track outside of the Northeast Corridor which it spends money on, and must maintain, and, exploring the feasibility of transfer of that track is another possibility that should be looked at.

Amtrak operates 497 stations, nationwide, and only the Northeast Corridor stations have any freestanding economic promise. A very constructive way that States and communities could work with Amtrak to preserve its services, without taking on enormous costs, would be to take on the obligation of those smaller stations.

That is a $25 million to $30 million—I believe—and I say I believe—annual item. If you do all of these things, or you do a substantial part of them, you also yield concomitant reduction in corporate overhead costs.

TOTAL POTENTIAL COST REDUCTIONS

Now what does it all add up to? I cannot tell the committee that now. I have been working to analyze the system and develop areas for analysis like these since the day that Elizabeth asked me to get started on it. And I have been working with Amtrak to come up with an analytical base from which we can do estimates. My best judgment, at this point, subject to correction, is that if you do all of that—and some of those things are very, very difficult to do. And they are all stakeholder items.

They are all things that the people who get something from Amtrak have it within their power to do, but they are not easy.

You could possibly reduce Amtrak's subsidies in the $300 million to $325 million range. That still leaves you with $300 million in annual losses, and it is a level we cannot afford to pay.

But those are the ideas that we have generated, and I want to tell the Chairman, that we are doing everything we can do to find out if there is a way to get this company to a point where it could ever run at a break-even level outside of Federal subsidy.

Mr. LEHMAN. Mr. Durbin.

Mr. DURBIN. Mr. Riley, let me commend you, having been a little rough earlier, for playing the role of administrator instead of funeral director. I think it really is positive, even though some of these things are very difficult that you suggest—that it is positive that we look to ways to reduce this subsidy, and I am anxious to hear Mr. Claytor's reaction, and to work with you on seeing if some of these can be implemented. I guess my trouble or my problem is, that when you begin with the premise that we are going to get out of this business, rather than try to improve it, a lot of us are troubled by that.

So, I would like to work with you on this, if we can, and with Mr. Claytor as well.

Mr. RILEY. And let me say in fairness to Graham, that he has probably heard some of these things for the first time this morning, and just as I have not had an opportunity to attach any costs to them—and they are all matters of degree.

I mean, I am stating a premise, all of which probably cannot be done, and some degrees of which may be able to be done.

I think it is very difficult for either of us to comment, in substance, on what might be done here at this point, but we have got to work to the point where we can.

AMTRAK ON COST CUTTING MEASURES

Mr. LEHMAN. I just wanted to state that I was impressed with your numbers and cost cutting ideas, as was Mr. Durbin. Some of those, as you said, from the standpoint of dollars and cents, sound pretty good, but from the standpoint of social or political realities they may not be as easy to accomplish. Mr. Claytor, could you comment?

Mr. CLAYTOR. Well, Mr. Chairman, a number of these things that Mr. Riley has mentioned, we are already undertaking and we agree with, but there are some others, and I will comment on each of them and try to put them in the appropriate category.

WAGE FREEZE

A one-year wage freeze I think, in the real world, is clearly not feasible. We are working very closely with the unions.

As a matter of fact, in many cases we are in national handling with the rest of the industry on wage increases, the contract being up this year, and very favorable agreements have been reached, amounting to modest increases that usually do not come to more than the amount of inflation.

To say in addition to that, we already have an agreement with practically all of our unions for a 12 percent reduction below the national wage average.

Now if we, on top of that, go into the unions and say, give us a one-year wage freeze, I think we would turn the boat over. I think that as a matter of fact is not feasible in the real world.

Mr. **Durbin**. Mr. Claytor, at this point there is a strike going on of the TWA flight attendants, and I know it because I have missed a couple planes.

Mr. **Claytor**. Yes.

Mr. **Durbin**. The question is how much money they are going to see cut from their wages, not even the question of a freeze.

Mr. **Claytor**. That is right.

Mr. **Durbin**. And it strikes me that if the transportation industry is faced with this, those unions involved in the railroad transportation area must accept some reality, too, that they have to sacrifice to meet some current needs.

Mr. **Claytor**. One of the things that I am going to cover later on, Mr. Durbin, is the extensive new contracts that we made with our operating employees, the train and engine crews, off corridor, which is the first breakthrough in railroad work rules that has been made on a wide basis, in history.

I think that we are doing extremely well with this, and I also think that if one tries to add to this, the kind of thing that says, oh, give us a wage freeze, in addition to having already given a reduction in wages, and having already agreed to this new elimination of work rules, I think we are not going to get anywhere, as a practical matter.

Mr. **Lehman**. Would you like to comment on this elimination of the work rules right now, or would you rather wait till later on?

EXPANDED LABOR TAKEOVER

Mr. **Claytor**. I would like to do that later. I would like to deal with these items first. An expanded labor takeover is one of his points, and that is one we will go into in some detail, including the takeover of our train and engine crews throughout the country, which has been agreed to now with both the United Transportation Union and the Brotherhood of Locomotive Engineers.

FREQUENCY ALTERATIONS

Frequency alterations. Our ability to make frequency alterations without triggering labor protection is in doubt unless the pending Reconciliation Act is passed.

That act makes it perfectly clear that we can do that without any liability for labor protection.

We did do it this year with a number of trains. We can do that in the off-season, particularly, where we make seasonal adjustments with trains that have light loads in the winter-time and we cut them back to three times a week and save some money, without losing too much revenue.

We can do that, we are doing that, and we will continue to do that. What we need to do with the ones we made in January is to evaluate the result of each train, and see how much we saved, and which ones we saved the most on, and why, and then we will use that in moving forward with additional off-season frequency adjustments next year. So that is a good point.

MERGE TRAIN AND ONBOARD CREWS

Merge train and onboard crews. But as we take over the conductors and trainmen, we may be able to in some cases to eliminate the train chief. You obviously, cannot have the conductor serving as a dining car steward. I mean there is no way that you can merge the onboard crews in the service area.

But you might be able to merge to some extent the onboard supervision. There is a problem with that, in that even if the conductors work for us and can be in charge of all of that, they change at most, every four, six or eight hours. And you get another conductor who does not know what is going on up to that point, and you have to start all over. And for that reason, particularly on our major heavy long-distance trains, I think that it would be unwise to try to eliminate the train chief.

But there are some savings that can be made there and we will work on that as we take over the train and engine crews.

FOOD SERVICE

Contractor food service. We have looked at that before and I do not think that it will save any money and I do think that it will result in poorer service. We contracted the food service on Auto Train with Marriott and the service was adequate but expensive. And we took over the food service ourselves and the food is better and the service is cheaper.

So you have to look at that very carefully. And I think that the way our trains operate you would have to have all kinds of contractors doing this in different places. I think that it would not be feasible and would not save money.

RESERVATION SYSTEM

Reduce the scope of our reservations? Well, we have unreserved trains on most of our short-distance runs, but to eliminate reservations on our long-distance trains, I think would probably cost us more money than the reservation system has.

The great advantage of the reservation system is that on a long-distance train, like New York/Florida, or New York/New Orleans, we know a couple of days in advance how many people we are going to have on the train and we can set the number of coaches accordingly.

Otherwise, you have got to guess and you end up running three or four coaches that are empty, because you have guessed wrong or you thought that more people would be there than they were.

Or even worse, you are three or four coaches short and you have people traveling 600, or 700 or 800 miles and then having to stand up and then all hell breaks loose.

And I think on our long-distance service—we have tried this, it has been worked both ways—eliminating coach reservations on our really long-distance trains I think is a bad practice and would probably cost us more than it would save.

RETIREMENT SYSTEM

Change railroad retirement to Social Security. That is something that would have to be done by statute and of course, all the employees who have already paid in their higher railroad retirement would have to keep it and to change it for the future would be difficult. I do not believe that it could pass in Congress and I would not advocate it. It would save some money but we are a railroad and to have the only railroad in the country suddenly carved out of the railroad retirement system, I think would be unfortunate.

Another problem would be, if you remove 25,000 Amtrak employees from the railroad retirement system, that would have a very bad impact on the rest of the railroad retirement system which is already in some trouble.

And I think the other employees in the other railroads would object very strenuously to that and it would make the system closer to insolvency than it already is and it is already in some trouble.

I do not think that is a very feasible suggestion.

CONSOLIDATION OF MAINTENANCE FACILITIES

The consolidation of maintenance facilities. Well, that is being done as we develop new ones.

For example, the new Washington maintenance facility which will be in full operation in another couple of months, will be doing more work that has been spread over other less efficient facilities. And we are trying to do that.

For the last 15 years we have been closing small maintenance facilities and consolidating them into main ones and I think that we can continue to do that as we go forward.

In almost every case, it requires some capital expenditure. And when capital is as tight as it is right now, even though it saves us money, I think that we cannot really afford to do that if we have not got the capital to spend.

That is one of the big returns that we have had on the capital that we have spent, is in improving our maintenance.

SLEEPER SURCHARGE

Surcharge on sleepers. We tried that in the summer of 1983 and it was interesting. It is true that our sleeping cars can be sold out in peak periods. We took a group of trains in the summer of 1983 and put the surcharge on the sleeping accommodations and took some other long distance trains that were not in competition with them but comparable and did not put the surcharge on. The surcharge resulted in significant loss of business and the amount of money that we got from the surcharge trains was less than the amount of money that we got from the those without the surcharge.

FARE POLICY

This is not insensitivity to price even though the trains get sold out and I just think that the correct policy with respect to all of our prices is maximize the revenue.

Now, you cannot always guess right on this. But it is perfectly plain that anything that will produce more revenue, whether it is raising the fare or reducing the fare, it is our policy to do it.

And we have had enough experience now that we, I think, are pretty good at it. And we have frequently substantially increased our revenues with promotional fares, like the "All Aboard America" fare that gives you a roundtrip almost anywhere east of the Mississippi for a $150 and that sort of thing.

That fare is always blanked during peak periods, like Christmas, Thanksgiving and a couple of months in the summer, but for the rest of the year it produces more revenue than if you did not have it.

So, our fare policy that is spread across the top of the marketing department is "maximize the revenue," move the fare whichever way will produce the most revenue is what we try to do.

And I say with the experience that we have had, we are doing a pretty good job at that.

AUTOTRAIN

The unaccompanied autos on the Auto Train, that is a provision that is in the Reconciliation Act and I am hoping that will pass. It will help us get a little more money there.

403 (b) SERVICE

Mr. Riley mentioned that legislation to have the states pay more on their 403-B trains. Well, we have agreed to that in the past, provided you did it in a sensible way. There was a provision proposed at one time, that just said the states have got to pay all the costs right away. That would have wiped out our 403(b) trains. But we said that we would be willing to go with legislation that provided that, let us say, starting two years from the time of enactment, so that the state legislatures would have a chance to consider it—the state payment would increase by 5 percent of the short-term avoidable costs, each year, until the train, in effect, broke-even on a short-term avoidable cost basis.

And I think that is feasible. The states will not like it and it may be hard to pass, but I think that it would save some money and it would be a good thing. We would be willing to go along with that.

FULLY ALLOCATED FREIGHT COSTS

Fully allocated freight costs. Well, of course, again, we have got that in the Reconciliation Act and if we just get that passed, that will produce probably between $20 and $30 million more of revenue. It would not start before 1987 because even after the act is passed, it will take us six months to get the thing through the ICC.

But the reason that I say 20 to 30, actually it was, I think, $38 million that we would have saved on the basis of volume a year ago. If this happens, I am sure the freight volume would go down. That is good, too, from our standpoint, even though it does not produce the money.

The more freight we get off of the high-speed corridor, the cheaper it is for us to maintain it and the better service we can provide. But it ought to give us between $20 and $30 million more in cash too. And I think that is a good thing.

POLICE FORCE

The Amtrak police force. We have reorganized the Amtrak police force and I think—I am very enthusiastic about having a railroad having a good police force. And I think that we are developing one of the best in the industry.

I think that I would not be in favor of trying to reduce it in function. I would like to make it more efficient with better people and that is what we are trying to do.

TRACK AND STATION REDUCTIONS

Track outside of the Northeast Corridor. We have only one—I think that it is about 70 miles of track in Michigan that was purchased some years ago from Conrail because Conrail was going to abandon it and it is used by our trains that run between Detroit and Port Huron and Chicago. We do maintain it and not much else runs over it. But the money has all been spent now. It was very expensive for Amtrak to rehabilitate that line. But that money, the rehabilitation has been finished now for a couple of years. The daily maintenance is relatively small. I would like to get some freight over that railroad and hopefully with the mergers and things going on, perhaps we can persuade railroads in the area to put some freight over the railroad and give us a little more revenue, because the passenger load is not heavy enough so that the freight would interfere in any way.

But that is the only off-corridor line we have and I do not think there is much to it right there.

Stations. I agree about the stations. We spend far too much money on the smaller stations. And by that I mean particularly the stations that are served by only one pair of trains a day or at most, two pair of trains a day.

I think the community ought to take on those stations. That is not easy to do. The community never wants to spend any more money than it has to, but we are making some progress with that.

For example, in Warsaw, Indiana, a little town between Valparioso and Chicago, the town was very anxious to have the Broadway Limited stop there. And they said that they had a lot of people who wanted to ride through to New York and Philadelphia. And we said we just could not afford the cost of rehabilitating the old passenger station and then maintaining it and cleaning it and having somebody look after it.

But after looking at it, we said, we think there are enough passengers to justify the cost of just stopping the train and if you, the town, will take on the whole job of fixing the station up and then cleaning it and maintaining it, and lighting it, we will stop the train and they agreed to do it.

And they are doing it now and it is working very well and we need to do more of that. And it might be that we can work out some kind of statutory provision that sort of says, after a certain period of time, the stations of a certain class have got to be at least partially supported by the town or we will quit stopping there.

SPRINGFIELD STATION

Mr. DURBIN. Would you yield, Mr. Claytor?

Mr. CLAYTOR. Yes, sir.

Mr. DURBIN. You are aware of the situation in Springfield, Illinois, where I was contacted by my Mayor and the Illinois Department of Transportation. They said, let us do something about our Amtrak station.

I met with Mr. Claytor and he suggested that the local developers get involved in this effort. Amtrak would have a very low profile, and low financial commitment in the renovation effort.

The response in the community has been overwhelming. It is exciting that they are going to renovate this downtown area, including plans for a new station, and Amtrak will not be holding the bag. I think our community will profit from it.

Mr. CLAYTOR. We are doing this in a number of places and where we have a city like Springfield, which is a fairly good sized community and we have multiple trains there, we can get a developer interested. And that is the ideal way to do it--a private developer who goes in and makes a profit out of it and puts in all the money and then we get to use the station without any cost.

The ones that we really need, where a developer is not going to be much interested, is the smaller town stations in which there is only one train a day. And those, it is for the convenience of the community, fundamentally, and it is not very expensive but when you add it all up it is very expensive for us particularly if the station has to be manned, we have union clerks and high wages, and we have been unable to get part-time agreements so that they could only work part-time. They have to work full-time, five days a week and that sort of thing.

So we need help on that. And that is one of the things that we are working on.

Mr. PURSELL. Mr. Chairman, could I ask a legal question in response to what Dick and you are suggesting of the local communities?

Are you limited and restricted to invest any Federal money in broader improvements of that particular center, whether it would be parks, parking, lighting or making other changes?

Do you have some flexibility in that?

Mr. CLAYTOR. We do. We do.

Mr. PURSELL. Well, we ran into that a few years ago when we had that so-called jobs bill, a one time appropriation.

And Amtrak kept telling me that we could not work out a comprehensive overall program with the community for remodeling because you had legal restrictions on the——

Mr. CLAYTOR. That was jobs bill money. The jobs bill money was strictly restricted to a whole series of projects that were directly related to the creation of specific jobs.

Mr. PURSELL. But under current law now you do have some flexibility?

Mr. CLAYTOR. Well, if we were using our own money but we were not prepared to use our own money to any great extent on any station unless there was going to be a substantial return to us.

That was the problem.

Mr. PURSELL. Thank you.

Mr. CLAYTOR. Yes, sir.

LABOR NEGOTIATIONS

Mr. LEHMAN. Mr. Claytor, last year both the House and the Senate Appropriations Committees made it clear in our respective reports that real progress was expected in your labor negotiations to produce additional cost savings for Amtrak. Would you review the progress you have made on this front and tell us if it has been sufficient in your view?

You mentioned your wage freeze. Under your present labor agreements what is the automatic annual wage increase?

Mr. CLAYTOR. There is not any. The contracts were up and the wage for the most part, for most of the unions the wage increase is in national handling. That is to say all the railroads together through the National Railway Labor Conference negotiate with the unions and we have given them a proxy to negotiate in several of our cases.

Now, those are well along. The negotiations with the UTU, that is the trainmen and conductors and with the Brotherhood of Locomotive Engineers have resulted in what I consider to be very modest increases basically, comparable to the cost of living.

Mr. LEHMAN. What is that? About 4 percent?

Mr. CLAYTOR. Yes, about 4 percent.

Mr. LEHMAN. In other words, the difference between your freeze and your present rate is about 4 percent?

Mr. CLAYTOR. That is right.

Mr. LEHMAN. I just wanted to have some idea of the numbers.

Mr. CLAYTOR. As to where it now is. We deal with 25 different bargaining units and every one is a little bit different so that I cannot make a general statement that applies across-the-board, but generally speaking, that is correct.

Mr. LEHMAN. Not far from 4 percent?

Mr. CLAYTOR. Yes, sir.

NORTHEAST CORRIDOR WORK RULES

Mr. **Lehman**. Okay, and then your answer to the rest of the question.

Mr. **Claytor**. All right.

Now, first, the most important development that we have had is the taking over of our train and engine crews off corridor using the Northeast Corridor work rules that we developed for operation there about three years ago.

We use an hourly rate of pay instead of mileage. We have flexibility in the use of the road crews to perform certain yard functions, and to make extended runs. Also new hires, other than the engineers are paid only 75 percent of the full rate the first year, increasing 5 percent each year.

And in addition, we have no firemen at all on certain designated short-runs, and we eliminate by attrition all firemen on all runs of under four hours scheduled time.

That is a big saving and it will not come instantly but it will come fairly regularly as we move along.

When this is fully implemented throughout the country, which will take, in my opinion, my people say that it will be done in 18 months and I keep saying it is more likely to be 2½ years because these are complicated and I have been through this sort of thing before.

But within 18 months and two to two and a half years, it will be done.

We will substitute 1,500 Amtrak employees for about 2,100 railroad employees. And we will save between $20 and $30 million a year on this operation.

The plan is to start the takeover on April 1st this year with the area between New York and Chicago and including Michigan and most of Illinois.

There is actually a court proceeding going on which the judge has been asked to issue an injunction against going ahead that fast, because certain union members claim that they were not adequately represented by the union.

It is really a suit between some union members and the union but I am satisfied that this will go forward, either on April 1st or very close to it.

Mr. **Lehman**. You are saving money by moving some Amtrak employees to railroad employees?

Mr. **Claytor**. It is the other way around.

Mr. **Lehman**. I see what you mean.

Mr. **Claytor**. Railway employees to Amtrak employees now.

Actually the individual employee is going to earn more money from us than he did from the railroad. But he is going to work a lot longer for it.

Eliminating people is where we save money and we pay them only on an hourly basis.

100-MILE RULE

Mr. **Lehman**. And that is because of the 100-mile rule?

Mr. **Claytor**. Yes, that is right.

Mr. **Lehman**. And the 100-mile rule will be worked out by what time?

Mr. **Claytor**. Immediately as we take them over.

Mr. **Lehman**. Is Amtrak going to be the only operating railroad that does away with the 100-mile rule or——

Mr. **Claytor**. I believe that at the moment we are the only major railroad. The Florida East Coast which obtained this by strike a long time ago, has been doing this for some time.

RESERVATION SALES OFFICES

Now, there are other labor matters here, too, besides this takeover.

And in these others, we still have some controversy, we have been unable to make as much progress as we wanted to. In order to have costs competitive to the airlines we must be able to use part-time employees at our reservation and sales offices. The volume in the reservation and sales offices varies enormously during times of the day. And by being able to put people on for half shifts, up to four hours, we can cover this at greatly reduced costs; otherwise, we have people on for 8 hours and four of those hours they sit around with nothing to do.

And we have proposed to put that system in and we have agreed that that would be true for new hires, but for existing employees, no one would be put on a part time basis unless he or she voluntarily agreed to it.

But we also have insisted that we get a two-tiered wage system so that the new hires would come in at a lower rate and would gradually work up.

The union, the clerks' union has not been willing to agree to that and now, we have therefore had to say that if we cannot do that, we have got to make the savings elsewhere. We are going to be forced to reduce our five reservation sales offices to only three. We can save a significant part of the money by doing that. We cannot save it all but we can save some. And so we are planning to consolidate the New York office and the Jacksonville office with the offices in Philadelphia, Chicago and Los Angeles, starting with the New York office.

I am hopeful that that does not happen. I feel that we really ought to do this. This is just sensible and it does not hurt any existing employee and it makes sense and we have just got to do that.

The airlines, in their reservation sales offices, have far lower wage rates and better work rules than we do and we are competing with them and we have got to do that.

Mr. **Riley**. On the labor agreements, I would simply say that I am satisfied with the progress that they have made. They are off to a very good start on it and I think that they are doing what they have got to do and I do commend them for it.

STATUS REPORT ON LABOR NEGOTIATIONS

Mr. **Lehman**. Please provide for the record the March 15 report to the Committee on this subject as requested by the Senate Appropriations Committee.

[The information follows:]

STATUS OF AMTRAK
NEGOTIATIONS WITH RAIL LABOR

PURSUANT TO SENATE REPORT 99-152 OF H.R. 3244
THE FY86 TRANSPORTATION APPROPRIATION BILL,
PUBLIC LAW 99-179

MARCH 15, 1986

WORK RULE REPORT

This report is submitted in accordance with instructions from the Committee that Amtrak and the representatives from its employees report on progress in the negotiation of changes in existing agreements that will result in cost savings to Amtrak.

Amtrak and the labor organizations have been engaged in constructive negotiations which we believe are fully responsive to the Committee's directions. These negotiations have already produced substantial savings in some areas and appear encouraging in other areas. Recognizing that the most substantial savings could be achieved by the direct employment of train and engine crews, significant time and effort have been devoted by Amtrak and the Brotherhood of Locomotive Engineers and the United Transportation Union to accomplishing that objective. All parties recognized the importance and the need for change. Agreements were concluded on December 23, 1985, by Amtrak and the Brotherhood of Locomotive Engineers and on January 29, 1986, by Amtrak and the United Transportation Union. The Agreements provide:

- Hourly rate of pay instead of the mileage basis of pay with time and one-half for working over 8 hours a day.

- Crew consist consistent with train size.

- Greater flexibility in use of road crews to perform yard functions in connection with their own train.
- Extended runs.
- No firemen on designated short runs and elimination of all firemen on runs with a scheduled running time of less than 4 hours. Any reductions to be accomplished by attrition.
- Five year entry rate for new hires.

When fully implemented, the Agreement will provide a maximum of 1,500 additional Amtrak employees operating over 17 railroads replacing a current work force on those railroads of 2,100 and will save Amtrak between $20 and $30 million annually, provided the current route structure is not changed. Amtrak plans to implement the takeover over an 18-month to 2 year period.

Amtrak also has been attempting to reduce its labor cost in the reservation sales area. Current hourly rates in the Reservation Sales Office are $11.13 for an employee with over 2 years service, $8.90 for the first year and $10.02 the second year. Comparable wages for Reservation Sales Agents in the airline industry begin in the $6.00 per hour range, reaching a maximum wage of about $11.00 in 7-10 years. In order to reduce this cost, Amtrak has been negotiating with the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) for the right to use part-time employees to cover peak periods and to reduce overtime. Amtrak has proposed that 30% of the current workforce be converted to part-time through the addition of new hires, attrition of existing employees and by employees who voluntarily convert to part-time. In addition, Amtrak is proposing that the new hires would be paid at a lower starting rate and progress over a six-year period to a full rate equal to 85% of the current full rate. Amtrak has met several times with the involved General Chairmen who are studying Amtrak's proposals and negotiations will continue on these issues.

With regard to the Brotherhood of Maintenance of Way Employes (BMWE), the Mediation Board has taken jurisdiction in an effort to assist both parties in settling Section 6 Notices filed by the BMWE in January 1984. The BMWE seeks the full recovery of the 12% wage increases given up during the last wage negotiations and substantive rules changes that will restrict the use of employees to their craft, provide greater employee protection, and prohibit Amtrak from contracting work covered by the BMWE agreement to persons not covered by the BMWE Agreement. In response to the BMWE position, Amtrak is seeking rules changes that will increase its flexibility in the use of employees and eliminate the Minimum Force Agreement negotiated during the NECIP program. Amtrak and BMWE have met 23 times, 13 of which have included a mediator and some progress has been made. The mediation process is continuing.

The wage and fringe benefit Section 6 Notices of Amtrak Service Workers Council, Brotherhood of Railway, Airline and Steamship Clerks (TC, NEC and Corp), International Brotherhood of Electrical Workers, International Brotherhood Firemen & Oilers, Sheet Metal Workers International Association, American Train Dispatchers Association, Railroad Yardmasters of America (Station Masters) are being negotiatd for Amtrak by the National Carriers Conference Committee (NCCC). To date, no agreements have been reached between the NCCC and the individual unions with the exception of the United Transportation Union (conductors, trainmen and engine service employees). In addition, Amtrak has signed agreements with American Railway and Airway Supervisors Association (Technicians and on board Supervisors), Railroad Yardmasters of America (New Orleans Union Passenger Terminal), International Brotherhood of Boilermakers, Iron Ship Builders, Brotherhood of Railway, Airline and Steamship Clerks (New Orleans Union Passenger Terminal), Brotherhood of Locomotive Engineers (New Orleans Union Passenger Terminal), Amtrak Service Workers Council (wages and fringe), and the Joint Council of Carmen, Helpers, Coach Cleaners (wages and fringe) to apply the applicable provisions of the agreements between the NCCC and the individual unions. The Section 6 Notices of the American Railway and Airway

Supervisors Association (Mechanical & Maintenance of Way, rules and wages), Brotherhood of Railway Signalmen (rules and wages), International Association of Machinists & Aerospace Workers (rules and wages), Joint Council of Carmen, Helpers, Coach Cleaners (Rules), United Transportation Union (Stewards, rules and wages), Brotherhood of Locomotive Engineers (rules and wages), United Transportation Union (Engine Attendants, rules and wages) and the RYA (Yardmasters, rules and wages) are being negotiated directly by Amtrak. In the area of rule change negotiations, however, the parties anticipate very little additional savings can be produced as most of the rules were extensively revised resulting in significant savings in the 1982 negotiations. Those rules changes in conjunction with Amtrak wage rates, that are currently 12% below the industry average, allow Amtrak the flexibility needed to operate efficiently and economically.

Agreements have been concluded settling all outstanding Section 6 Notices with the American Federation of Railroad Police, Inc., United Transportation Union (Auto Train), United Transportation Union (New Orleans Union Passenger Terminal) and the United Transportation Union (Northeast Corridor, conductors and trainmen). The last named agreement is currently undergoing union ratification procedures.

Mr. **Lehman**. We will take a brief recess for a vote.

[Whereupon, the Subcommittee took a brief recess.]

MINIMUM FORCE AGREEMENTS

Mr. **Lehman**. The Subcommittee will reconvene and before I yield to Mr. Porter, I just have one quick question.

Mr. Claytor, getting back to your labor negotiations for a moment, I understand that you have some arbitration issues as set in your minimum force agreement.

Would you elaborate briefly?

Mr. **Claytor**. Yes, Mr. Chairman.

During the construction of the Northeast Corridor an agreement called the Minimum Force Agreement was made which gave, during the construction, some leeway to the Northeast Corridor people in contracting out and doing other things.

In order to get that, it was agreed that there would be a minimum employment of around 2,500 maintenance of way employees.

And now, the Northeast Corridor construction is largely completed and now maximum requirements are in the neighborhood of 1,600 employees. We may be able to use more this summer in connection with the construction of the Atlantic City line.

An arbitration award back in 1985 when we objected to this, authorized us to reduce the force to 1,670 from October to March, but we have to put it back to almost 2,500 in March. Now, we have got to terminate that agreement before 1987. We will be all right this summer with the Atlantic City construction. I want to hire all the people that we actually need, but with new construction gone, the regular maintenance force has got to be significantly reduced and we have a Section 6 notice pending—that is the method by which under the Railway Labor Act you change a contract—to terminate this minimum force agreement.

Because we only hire the people that we need—more in the summer than in the winter but still far fewer than this would require.

And we are going to have to progress that. If we do not do that, what we will have is an enormous waste of money with a lot of maintenance of way people getting paid without work to do and we cannot have that in 1987.

And any help we can get from this Committee by asking for reports from the parties, or anything else, would be helpful.

Mr. **Lehman**. Mr. Riley, you have a response to what Mr. Claytor has just said?

Mr. **Riley**. Only that I am in complete accord with his position. Those agreements were entered at a different point in time when the status of work on the Northeast Corridor was very different than it is today. It just does not make economic or social sense to incur those expenses, when the work is not there and when the company cannot afford it.

Mr. **Lehman**. Mr. Porter, are you ready for your time?

EMPLOYEE DISMISSAL

Mr. **Porter**. Yes, thank you.

Mr. Chairman, let me first thank you and the members of the Subcommittee for extending me this courtesy of sitting in with your Subcommittee today.

I have a rather lengthy statement that I would like to give so that Mr. Claytor can hear it and then ask for his response to it. And then I have advised him that I have a number of questions for the record, that I would request that the Chairman ask that answers be given to within a relatively short period of time—ten days or whatever Mr. Claytor thinks is reasonable so that this matter can be cleared up.

Mr. LEHMAN. Could we have his responses submitted to the Committee rather than the record, or we could do both?

Mr. PORTER. All right, fine. Thank you very much, Mr. Chairman.

At this time, I would move for inclusion in the record today documents that I believe are relevant to the matter that I am here to discuss and supplementary material that may be supplied subsequently and this is the material for the record.

[The documents referred to follow:]

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 13, 1986

Mr. W. Graham Claytor, Jr.
President
Amtrak
National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

We have reviewed the March 10, 1986 report to you from Congresswoman Cardiss Collins, Chairwoman of the House Government Operations Subcommittee on Government Activities and Transportation. The report concerns Amtrak's recent dismissal of Ms. Jodie Walton, a corporate labor relations employee, who was compelled in late 1984 to testify before that subcommittee reviewing Amtrak labor procedures.

That report concluded:

- Amtrak had no legitimate basis whatsoever to fire Ms. Walton.
- Amtrak had not produced a shred of evidence to support its claim that Ms. Walton was guilty of any wrongdoing.

It is our understanding from your report to the Subcommittee on Government Activities that Ms. Walton was dismissed for being the addressee on an envelope containing some Amtrak letterhead and notes to a former employee with litigation currently pending against Amtrak.

If Amtrak vigorously pursues and punishes employees engaged in proven schemes to transmit stationery to outsiders for illegal purposes, you will enjoy our complete support. However the above-cited March 10 report to you and the underlying affidavits addressed to the United States Congress, contradict and refute the apparent Amtrak conclusion that Ms. Walton was a knowing participant in a scheme to deliver

Amtrak stationery to a former employee. To the contrary, the affidavits uniformly support the conclusion that Ms. Walton was the addressee on a packet of company materials, the actual contents, of which she would not have been aware. This can, by no stretch of the imagination, be deemed proven misconduct.

The Chairwoman's practice of fully investigating all instances of potential employer reprisal against congressional witnesses is deeply rooted throughout committees in the Senate and House of Representatives. There is an important constitutional basis for this practice. The legislative and oversight processes depend upon the free and unfettered communication of information and ideas which grinds to a halt, when any threat, real or perceived, exists to discourage participation. Of this, there is universal recognition in Congress and among the citizenry.

The dismissal of Ms. Walton appears to be without justification and hence, can only fuel the perception that she has been made the subject of a reprisal for her participation in that constitutional process.

We strongly urge you to immediately review this individual injustice, mark on Amtrak credibility, and equally importantly, the real or perceived threat to the constitutional integrity of Congress. We urge you to immediately restore her to the position from which she was dismissed and expunge to all references to this incident from her record immediately. In addition, we urge you to review your management assignments in order to identify those who may have been responsible for this unfortunate personnel decision. Ms. Walton's perception that there are some in your Corporation who may be seeking her removal without cause deserves your personal consideration.

Sincerely,

Alan J Dixon
ALAN DIXON
U.S. SENATE

Cardiss Collins
CARDISS COLLINS
MEMBER OF CONGRESS

PAUL SIMON
U.S. SENATE

JOHN PORTER
MEMBER OF CONGRESS

-more-

Sidney R. Yates
SIDNEY YATES
MEMBER OF CONGRESS

CHARLES HAYES
MEMBER OF CONGRESS

Gus Savage
GUS SAVAGE
MEMBER OF CONGRESS

Marty Russo
MARTIN A. RUSSO
MEMBER OF CONGRESS

William O. Lipinski
WILLIAM LIPINSKI
MEMBER OF CONGRESS

Frank Annunzio
FRANK ANNUNZIO
MEMBER OF CONGRESS

Dick Durbin
RICHARD DURBIN
MEMBER OF CONGRESS

GEORGE O'BRIEN
MEMBER OF CONGRESS

CARDISS COLLINS, ILLINOIS, CHAIRWOMAN
MAJOR OWENS, NEW YORK
TOM LANTOS, CALIFORNIA
GERALD D. KLECZKA, WISCONSIN
MATTHEW G. MARTINEZ, CALIFORNIA

ALFRED A. (AL) McCANDLESS, CALIFORNIA
PATRICK L. SWINDALL, GEORGIA
THOMAS D. (TOM) DeLAY, TEXAS

(202) 225-7920

NINETY-NINTH CONGRESS

Congress of the United States
House of Representatives
GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, DC 20515

61

March 10, 1986

Mr. W. Graham Claytor, Jr.
President
Amtrak
National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

I have carefully reviewed your letter of February 4, 1986, in which you responded to my January 24 inquiry concerning the basis for Amtrak's firing of Ms. Jodie Walton, who testified before this subcommittee in September 1984.

In her testimony, Ms. Walton supplied evidence concerning Amtrak labor law violations, particularly those concerning unionized, minority employees.

As noted in your letter, Ms. Walton was removed from her position as an Amtrak Labor Relations Supervisor on January 7 of this year. The circumstances surrounding Ms. Walton's dismissal, according to your letter, were as follows:

> During December 1985, a packet of company material addressed to Ms. Walton was intercepted by the Division Manager Human Resources, Chicago. The packet contained numerous pieces of Personnel Department stationery with notes from two Personnel Department employees to a former Amtrak manager, Mr. Val Racich. Before his dismissal Mr. Racich had been Amtrak's Division Manager Human Resources in Chicago. Mr. Racich currently has litigation pending against Amtrak over his dismissal and therefore, in light of his antagonistic interest to the Corporation, it would be highly inappropriate to send blank company stationery to him. [Emphasis added].

According to your personal report to me:

1. Two personnel department employees mailed an envelope with blank Amtrak stationery and notes to a former Amtrak manager asking for letters of reference.

2. The former Amtrak manager was involved in litigation against Amtrak.

3. The envelope was addressed to Ms. Walton.

4. The envelope was intercepted by the supervisor of the two personnel office employees who assembled the packet and wrote the notes.

5. Ms. Walton never received the envelope.

It is my practice to fully investigate all instances of potential employer reprisal against subcommittee witnesses whose testimony tends to reflect unfavorably on the employer's policies or management. Ms. Walton's testimony clearly falls into that category.

Leaving aside whether one should properly be fired for knowingly receiving 17 pieces of stationery, the immediate threshold issue is whether Ms. Walton had reason to know and had acquiesced in the decision on the part of a fellow Amtrak employee to send her an envelope containing unused Amtrak stationery for transmittal to a former Amtrak employee. Ms. Walton clearly should not be held responsible for material sent to her without her prior knowledge.

You and Amtrak's General Counsel have repeatedly assured Amtrak employees and the United States Congress that no employee would suffer reprisals for cooperating with Congress.

In light of those considerations and other information before me, I determined that it was essential to ascertain whether Amtrak had taken reprisal action against a subcommittee witness. I, therefore, ordered a full investigation of the incident out of which Ms. Walton's termination arose.

That investigation in brief revealed that:

1. An envelope containing Amtrak stationery was mailed with notes to a former Amtrak manager asking for letters of reference.

2. That former manager was involved in litigation against Amtrak.

3. The envelope was addressed to Ms. Walton.

4. The envelope was intercepted.

5. Ms. Walton never received the envelope which was never shown to her.

But, as has been established by the subcommittee:

1. Ms. Walton was expecting an envelope containing only a resume.

2. Ms. Walton did not know that the envelope was to contain Amtrak stationery.

Your February 4 letter does not state whether Ms. Walton admitted, or denied, knowing that she was to receive the stationery. Indeed, your silence on that point reinforces Ms. Walton's statement to the subcommittee that she was fired (a) without being informed with specificity of the allegations or charges against her (b) without being permitted to recount her version of the situation and (c) notwithstanding her denial following Amtrak's summary investigation.

Significantly, in her statement to the subcommittee, Ms. Walton unequivocally denied prior knowledge of her intended receipt of the stationery as follows:

> At no time did I have any communication with anyone regarding the Amtrak stationery until after I was placed on administrative leave. Even Amtrak investigators, Mr. Carter and Mr. Garofollo, never mentioned the Amtrak letterhead stationery during the investigative interviews with me.

According to Ms. Walton, in early December, she spoke with a Mr. Val Racich, a former Amtrak employee, who offered to assist her in updating and revising her resume. Shortly thereafter, according to Ms. Walton, she told the then Amtrak employee Linda Watson of her conversation with Mr. Racich.

As attested to by Ms. Walton:

> Ms. Watson asked if I thought Mr. Racich would mind assisting her as well. I replied "absolutely not, I don't think he'd mind at all". I advised her that I intended to meet Mr. Racich during Christmas week for lunch and that I would be glad to bring it to him and ask. She stated her intention to send her resume to me. We also discussed generally letters of reference. I told her who I intended to approach for my letters. She then asked me if Mr. Racich would likely write her such a letter. I told her I thought he would.

Ms. Walton in her submission to the subcommittee thus flatly denied any prior knowledge of the stationery that was mailed to her and intercepted by Amtrak.

Upon review of Ms. Walton's affidavit, the subcommittee secured additional statements from those in a position to prove or to disapprove her contention. Chief among those was Ms. Linda Watson, the Amtrak employee who was fired after admitting having sent the stationery to Ms. Walton.

In terms of Ms. Watson, the key issue is whether she communicated with Ms. Walton that she would be sending unused Amtrak stationery to her for transmittal to Mr. Racich. In her affidavit to the subcommittee, Ms. Watson attested that she had advised Ms. Walton only that she was planning to transmit a resume to her for transmittal to Mr. Racich.

As stated by Ms. Watson:

> Ms. Walton mentioned to me that Val Racich was in the process of updating and editing her resume so that she could begin a serious job search. I told Ms. Walton I would appreciate receiving help from Mr. Racich on my twelve year old resume also. That resume had never been updated since my 1973 Amtrak hiring. She stated she was sure that Mr. Racich would help with this update and that she would be having lunch with him during the holiday period. She offered to deliver my old resume to him if I gave it to her before I left on vacation. I agreed. I also mentioned that I wanted Mr. Racich to write me a letter of reference because he had supervised my work for 10 of my 11 years of Amtrak service. Ms. Walton predicted he would be happy to write such a letter. Then the subject was dropped.

In explaining why she mailed the stationery in question to Ms. Walton, Ms. Watson offered that:

> On an impulse, one which I now regret, I grabbed a small handful of Amtrak stationery and slapped a "Post-it" (sticky) note on the stationery and wrote a quick note to Mr. Racich requesting a letter of reference. I hoped Ms. Walton would fill in the details [of my wanting a letter of recommendation] when she met with Mr. Racich.
>
> After I sealed the envelope and walked to the outgoing mail station, I mentioned to Cheryl K. Helsel, an employee in my small office, that I was asking Mr. Racich to write me a letter of reference and update my resume. I told her Ms. Walton would soon see Mr. Racich. I also told Ms. Helsel that I wasn't including my resume because I hadn't found it yet. She asked if Mr. Racich would likely do the same for her and I stated that I thought he would. I handed her the envelope so that she could reopen it and attach her own note. She opened the envelope, attached her note, resealed it and delivered the resealed envelope to the 3rd floor mail facility, all while out of my presence.

Again, according to Ms. Watson, by way of emphasis, "Except for the above, I never spoke with Ms. Walton, Ms. Helsel, or Mr. Racich about the envelope until after Amtrak investigators (Mr. Blum and Ms. Thornton) completed their investigation of the incident on January 3, 1986."

Ms. Watson's explanation was verified by Ms. Helsel in an affidavit provided the subcommittee:

> The envelope Ms. Watson handed to me was addressed to Jodie Walton. Ms. Watson explained to me that she was sending her request for a letter of reference to Val Racich by way of Jodie Walton because Ms. Walton was to have lunch with Mr. Racich sometime soon.
>
> I opened the envelope. Inside I found some Amtrak letterhead and a note to Val Racich from Linda Watson requesting him to write her a letter of reference. I wrote a yellow "post-it" note and stuck it to the stationery as Ms. Watson had done.
>
> I did not question the presence of the stationery in the envelope because I knew that sometimes people send things through inside mail in the same envelope for unrelated purposes. Moreover, since Ms. Watson was my supervisor, it was not my place to question her decisions.

In further reviewing Ms. Walton's assertion that she had no reason to believe that Ms. Watson would be sending Amtrak stationery to her for delivery to Mr. Racich, the subcommittee obtained an affidavit from Mr. Racich which supports, to the extent of his knowledge, Ms. Watson's version of the events that precipitated her firing.

By way of summary, therefore, the subcommittee has received and reviewed formal affidavits from the four principals involved, including Ms. Walton. Ms. Walton's assertion that she did not know that she was to receive blank Amtrak stationery from Ms. Watson was supported by Ms. Watson. The affidavits obtained from Ms. Helsel and Mr. Racich further attest to the truthfulness of Ms. Walton's statement.

Your report to me, while implicitly acknowledging Amtrak's failure to interview Ms. Walton, sought to impugn her credibility in asserting that Ms. Watson and Ms. Helsel "Both readily admitted [to Amtrak] that they knew what the packet contained and that Ms. Walton also knew its contents, was expecting the packet, and planned to deliver the packet to Mr. Racich."

Amtrak's assertion that Ms. Watson implicated Ms. Walton when questioned by Amtrak investigators was flatly denied by Ms. Watson in her affidavit to the subcommittee. As emphasized by Ms. Watson:

> Amtrak investigators Mr. Blum and Ms. Thornton never asked me whether Ms. Walton was expecting my envelope.
>
> Amtrak investigators never asked me what Ms. Walton expected in the envelope.
>
> I never told Amtrak investigators that Ms. Walton knew the envelope contained Amtrak stationery. Such a statement would have been false. She could not have known the envelope would contain Amtrak stationery unless Ms. Helsel told her. I made the decision to include the sheets of stationery on impulse when I sent the envelope and did not again speak to Ms. Walton until after the Amtrak investigation. (Emphasis in original.)

Just as Ms. Watson denied having told Amtrak investigators that Ms. Walton knew that she would be receiving the Amtrak stationery, Ms. Helsel similarly attested to the subcommittee that she:

> never told Amtrak investigators that Ms. Walton knew the envelope contained Amtrak stationery. Such a statement would have been false because I hadn't communicated with Ms. Walton and Ms. Watson never informed me whether she had discussed the envelope with Ms. Walton.

In conclusion, Mr. Claytor, the subcommittee investigation concerning Amtrak's firing of Ms. Jodie Walton has lead me to conclude the following:

- That Amtrak had no legitimate basis whatsoever to fire Ms. Walton.
- That Amtrak has not produced a shred of evidence to support its claim that Ms. Walton was the knowing intended recipient of a packet containing 17 pieces of unused Amtrak stationery.

Having concluded thusly, I am left with no alternative other than to speculate on the true basis for Ms. Walton's dismissal. In that regard, I must reluctantly conclude that Amtrak was "out to get" Ms. Walton. Part of the evidence in support of that proposition is contained in Ms. Walton's affidavit in which she quoted J. W. Carter, Amtrak regional manager, as having told her when she was dismissed that "you know they were out to get you."

Earlier evidence that Amtrak was "out to get" Ms. Walton first came to our attention in late 1984, shortly after Ms. Walton's testimony. Ms. Walton's then supervisor, Mr. Michael Hagan, was the subject of much of Ms. Walton's testimony concerning Amtrak's mistreatment of union workers. A mere one week after her testimony, Mr. Hagan placed Ms. Walton on probation for allegedly missing a deadline.

Given that Amtrak has been "out to get" Ms. Walton, I must reluctantly acknowledge the possibility that Ms. Walton was dismissed for her having cooperated with this subcommittee during its review of Amtrak's disciplinary procedures for unionized workers.

If true, such conduct on the part of Amtrak officials would violate federal criminal and civil law. For example, 18 USC 1505 makes it a crime to "obstruct, impede or endeavor to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had...by either House [of Congress], or any committee of either House..."

Accordingly, given the potential seriousness of the situation and the possible violation of criminal law by Amtrak officials, I am inclined at this point to refer the matter to the U.S. Department of Justice for appropriate action.

In a further effort to be thorough and fair, I am prepared to delay a final decision on the matter for a period not to exceed fifteen days to provide Amtrak with an opportunity to meet with subcommittee representatives in Washington and to provide the subcommittee at that time with a copy of all written materials in its possession concerning Ms. Jodie Walton.

Your cooperation in expediting the above meeting is appreciated.

Sincerely,

Cardiss Collins

CARDISS COLLINS
Chairwoman

JOHN EDWARD PORTER
10TH DISTRICT OF ILLINOIS

COMMITTEE
APPROPRIATIONS

SUBCOMMITTEES
LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION
FOREIGN OPERATIONS
LEGISLATIVE BRANCH
COCHAIRMAN
THE HUMAN RIGHTS CAUCUS

Congreſs of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE
1131 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4835

HOME OFFICES
601-A COUNTY BUILDING
18 NORTH COUNTY STREET
WAUKEGAN, IL 60085
(312) 662-0101

104 WILMOT ROAD
SUITE 410
DEERFIELD, IL 60015
(312) 940-0202

1850 ARLINGTON HEIGHTS ROAD
SUITE 104
ARLINGTON HEIGHTS, IL 60004
(312) 392-0303

February 28, 1986

Ms. Becky Stiehl, Director
Benefits & Savings Department
AMTRAK
400 N. Capitol, N.W.
Washington, D.C. 20002

Dear Ms Stiehl,

I am writing on behalf of my constituent, Ms. Jodie Walton of Prospect Heights, Illinois. Ms Walton filed an application for hardship withdrawal from her 401k savings plan which I believe is administered by the National Railroad Passenger Corporation for Amtrak. It is my understanding that she has been rejected because her hardship was not considered to be serious enough.

Unfortunately, Ms. Walton's financial crises was precipitated by her controversial firing from a management position in the Labor Relations Department at AMTRAK. I am aware that there are several Congressional inquiries surrounding this particular situation and I am presently reviewing the facts in her case. I will be making my own inquiry on this matter at a later date.

As I understand Ms. Walton's financial dilemma, she was without any income for six weeks, and was forced to borrow from her children to meet her mortgage payments and other necessary homeowner-type bills. She must reimburse her children for their temporary loans. (Her daughter is on disability at this time due to illness) In addition, although she is presently employed, it is less than one-half of her former salary and she finds it increasingly difficult to maintain her home on her lowered salary and is falling behind on important bills. This naturally places undue stress on an already stressful situation.

Although IRS has not defined the term "hardship" as it applies to the 401k program, my research shows that payment should not exceed the amount necessary to meet the immediate financial need created by the hardship and that other resources must not be reasonably available. MS Walton has no other savings accounts, but does have equity in her home in Prospect Heights and in property in Florida. However, these properties can hardly be considered as "reasonable" other sources.

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

Reply if any to ☐ Washington ☐ Deerfield ☐ Arlington Heights ☐ Waukegan

-2-

In light of the above facts, which I understand represent the "sense of Congress in the 401k Deferred Compensation Plan, I have advised Ms Walton to reduce her request for payout from her plan from $10,000 to $2,500 to cover the immediate financial problems as listed above.

To substantiate Ms Walton's claim, I am enclosing a letter signed by her son, George Avolio,stating that his mother borrowed $1000 from him in January of 1986, and the conditions under which the loan was made. I am also enclosing copies of checks written by Kelly Avolio, Ms Walton's daughter, in the amount of $312.71 to pay for various household expenses in January. Additional checks written for February were not available at this writing. These checks have all but depleted Kelly's funds. In addition, Ms Walton's present bills are in excess of $1000. I hope this information will verify Ms. Walton's hardship claim. (It is my understanding that a co-worker of Ms. Walton received a large payout to cover the cost of a second car) As you can see, the $2500 will alleviate an immediate financial problem and give Ms. Walton some breathing space, until such time as her overall problem with AMTRAK is settled.

In light of the above information, I am requesting a review of Ms. Walton's hardship request and urge that she be given all due consideration for approval of a payout in the amount of $2500 from her 401k savings plan. If I can be of further reference or if additional documentation is needed, I would appreciate your calling my staff assistant, Margaret Schlickman, in my Deerfield, Illinois office listed above.

Since time is of the essence in this matter, I would appreciate hearing from you as soon as possible. Thank you for you assistance with this matter.

Sincerely,

John Porter
Member of Congress

JP/ms
Enclosures

To: The United States Congress
Washington, D.C. 20515

From: Jodie Walton
Prospect Heights, Illinois

I, JODIE WALTON, UNDER OATH DO HEREBY DEPOSE AND
SAY AS FOLLOWS:

1. I have been employed by Amtrak since July 15, 1974 when I started as a reservations clerk. I became a member of the Brotherhood of Railway and Airline Clerks within 30 days and have remained since a member-in-good-standing.

2. In January 1975, Mr. Val Racich, Regional Director of Personnel offered me a management position in the Chicago Regional Labor Relations Department.

3. I worked for Mr. Racich and Mr. James Typton for several years and then strictly for Mr. Typton and his successors in the Labor Relations Department until my recent removal on January 3, 1986.

4. While in this Department, I was compelled to attend and testify at a hearing as a witness being conducted by a subcommittee of the U.S. House of Representatives, Committee on Government Operations. This hearing followed a request by Congressman Sidney Yates for an investigation of Amtrak labor policies and practices by the Transportation Subcommittee of the House Appropriations Committee.

5. At that congressional hearing I was interrogated by subcommittee Members seeking information on the integrity of the disciplinary process, including disciplinary hearings and appeals, in the Chicago region. I testified under oath in response to these questions and I believe my testimony did not reflect favorably on the Corporation's practices.

6. I testified in reliance upon unequivocal promises by Amtrak President W. Graham Claytor that employees who cooperated with the subcommittee's investigation would suffer no reprisals or adverse actions.

7. In early December, 1985 I spoke with Mr. Racich who was then employed with a different corporation. We were discussing the recent legislation popularly called "Gramm-Rudman" and its implications for the future of Amtrak. I indicated to him that I was planning to update my resume which was last prepared in early 1981 and that I would appreciate his assistance. I valued his assistance because resumes and job applications have always been his expertise and he understood my Amtrak work experience. We did not discuss a letter of reference because I felt the first step was to complete an up-to-date resume.

8. The conversation with Mr. Racich was concerning my resume and I did not ask him to assist anyone else in preparing a resume or letter of reference. Mr. Racich indicated he would be on vacation during the Christmas holiday and we agreed to have lunch together then downtown to review his recommendations for revising my resume.

9. In early-to-mid December, 1985 Linda Watson called me to discuss a technical personnel question involving labor relations interpretations. After completing that conversation, we began to discuss President Reagan's intention to eliminate Amtrak funding. I informed her that I was genuinely fearful that we would all soon lose our jobs, if Amtrak lost its federal support. To emphasize my concern I told Ms. Watson that I had already enlisted Mr. Racich's assistance in updating my personal resume.

10. Ms. Watson asked if I thought Mr. Racich would mind assisting her as well. I replied "absolutely not, I don't think he'd mind at all". I advised her that I intended to meet Mr. Racich during Christmas week for lunch and that I would be glad to bring it to him and ask. She stated her intention to send her resume to me. We also discussed generally letters of reference. I told her who I intended to approach for my letters. She then asked me if Mr. Racich would likely write her such a letter. I told her I thought he would.

11. I never received her resume in the mail. Her office is approximately two miles from my office in Chicago Union Station.

12. Because I was alone in the office on the date I was scheduled to lunch with Mr. Racich and the next day, I was unable to leave my office to have lunch with him on the pre-arranged date or any other time during his week of vacation.

13. I did not again speak with Mr. Racich until January 3, 1986 when I called him from a pay telephone to tell him I had been placed on administrative leave pending investigation.

14. I had no further opportunity to recall my earlier conversation with Linda Watson about her resume until the morning of January 3, 1986. At the completion of a 9:00 a.m. staff meeting, J. W. Carter, my regional manager, requested that I remain in the room.

15. We were joined, to my surprise, by John Garofollo, auditing department manager. Except to greet me and to apologize for interrupting the staff meeting, Mr. Garofollo made no statement during the ensuing meeting. Mr. Carter said "that's all right John, we're almost done, please sit down". I now believe Mr. Garofollo was invited to the room to be Mr. Carter's witness to the meeting which followed.

16. Mr. Carter shut the door, turned to me and, without asking any questions, stated that he was placing me immediately on administrative leave. I briefly laughed thinking he was joking. Then I asked "you're not joking?" He said he wasn't joking and that I was being placed on administrative leave.

17. I asked "Why? What are you charging me with?" He said, "Linda Watson and Cheryl 'Whatsher-name' have been removed from service for their involvement in company material [sic] in a fraudulent and dishonest manner and other things I'm not completely sure of."

18. I asked what that had to do with me. He stated that they were sending it to me so that I could give it to Mr. Racich. Then remembering my earlier conversations with Linda Watson, I asked "How can you pull a girl out of service for [sending] her own personal resume? What does that have to do with Amtrak property?"

19. I further reminded him that before Christmas he had advised all of us in his office that it would be wise to start considering other employment in light of budget cuts being considered. He acknowedged having so advised us in his office.

20. I told him I had sent my resume to Mr. Racich to be updated on his home computer and that Linda Watson had asked me some time ago if I thought Mr. Racich would do the same for her. I told him that I had told her that I was sure that he wouldn't mind. I told him that I had told Ms. Watson that I would bring her resume to Mr. Racich if she sent it to me, as I planned to meet him for lunch over the Christmas holidays.

21. After some silence, I asked Mr. Carter if he meant that I was to go home that instant. He replied yes, and that a letter would be forthcoming. He asked me to surrender all my keys to the office, which I did.

22. I never again spoke with Mr. Carter or any other Amtrak officials until Monday evening, January 6, 1986 when Mr. Carter phoned me at home and simply asked me to meet him the next morning away from his office. We agreed upon a restaurant in Chicago Union Station.

23. We met at the appointed time. Mr. Carter was alone. After casual conversation I asked him who was behind this action. He answered "you know I can't divulge that information." He then stated I can't believe you were so stupid Jodie. You know they were out to get you." I said "Joe, I know they're laying for me. I wouldn't have put myself in such a position."

24. I again asked him what he thought I had done wrong because I didn't know a package had been mailed to me or what it contained and because I never received the envelope. Mr. Carter replied "Now Jodie, you admitted in front of John [Garofollo] and me that you knew a document was coming to you." I told Mr. Carter "I didn't know anything about any letterhead."

25. Mr. Carter then stated that he had personally spoken to Linda and Cheryl and that they told him I knew what was coming. I told him it wasn't true.

26. At that moment he decided we should move to another location because he recognized that a person seated near us was listening to our conversation. It turned out that the individual was Ms. Helsel's husband who was waiting to attend a later meeting with Ms. Helsel at which she would receive her official termination for her involvement in the incident.

27. After moving to an empty office at Chicago Union Station, Mr. Carter handed me a letter of termination stating that he was very sorry to have to do this to me because he liked me a lot and was very happy with my work performance. He said "Jodie, do what you have to do." He repeated: "Do what you have to do."

28. Mr. Carter's dismissal letter stated:

"We have conducted a thorough investigation concerning your involvement in attempting to forward Amtrak company material to a non-Amtrak employee whom you knew to have interests adverse to this company. Your conduct in this matter violated Amtrak's established business standards and procedures as well as Amtrak's Rules of Conduct. Because of your involvement which demonstrated a serious lack of judgment, as well as a violation of Amtrak procedures and rules, we cannot continue to employ you in your current management position of trust and responsibility."

29. As soon as the opportunity arose following my dismissal from Amtrak management, I exercised my seniority rights to bid upon available vacant positions. I was awarded a unionized job, based upon my seniority, for a revenue accounting clerk position effective January 27, 1986. My work involves revenue auditing, a job which requires "trust and responsibility" and the measurement of compliance with company policies, qualities which Amtrak claimed I lacked in justifying my dismissal from my previous position.

30. As a result of my dismissal from my management labor relations position I lost six weeks of pay and benefits and was required to take a cut in pay from a salary of $32,000 per annum to an hourly wage through which I will earn $23,000 income per annum. In addition, I have suffered unjustified public humiliation.

31. I believe that Amtrak officials were trying to fire me for a long time because of my willingness to truthfully testify to Congress on the labor relations practices occurring in Chicago and my willingness to continue to respond to congressional requests for information.

32. At approximately the same time that Amtrak officials apparently intercepted the envelope addressed to me from Linda Watson, Mr. Carter reviewed with me several-month-old computer-generated lists of phone numbers I had dialed. Although I explained to him all of the calls I could remember, he was especially interested in one call I had made to telephone number (202) 225-7920, the Office of Congresswoman Cardiss Collins.

33. Mr. Carter demanded an explanation, which I willingly provided. I told him that I was simply continuing, when called upon, to cooperate with the congressional subcommittee overseeing Amtrak. These were my instructions from Amtrak President Claytor. Mr. Carter responded "yes, but not at Amtrak expense." As I recall the cost of that particular phone call was less than $2.00.

34. Although everyone in the office was expressly required to calculate their personal long distance calls in order to reimburse Amtrak, no effort was ever made to collect money from us, which in the case of other employees, amounted to substantial sums. From this I concluded the review of telephone logs was generated more out of interest in who I was speaking with than in how much money Amtrak could retrieve from its employees from a month of long distance calls.

35. I have appealed for assistance to my Congressman, John Porter; to Congressman William Lehman who chairs the Amtrak Appropriations Subcommittee; to Congresswoman Cardiss Collins who chairs Amtrak's oversight subcommittee; to Congressman Sidney Yates who is a member of the Appropriations Committee; and to Illinois' Senators Dixon and Simon and other interested Members of Congress.

36. I wish to emphasize certain facts:

a) I sent my resume to Mr. Val Racich, former regional manager of personnel for a suggested professional revision and updating in early December.

b) I did not know Linda Watson had sent me Amtrak letterhead until after my investigation was completed. I expected a resume from Linda Watson, at most. In fact, I wasn't confident she was going to send me her resume to forward to Mr. Racich because I wasn't sure her comprehension of the threat to Amtrak's funding was the same as mine.

c) At no time prior to Jan. 3, 1986, did I have communications about job references with Val Racich.

d) At no time prior to Jan. 3, 1986, did I have communications concerning resumes or references with Cheryl Helsel.

e) At no time did I have any communication with anyone regarding the Amtrak stationery until after I was placed on administrative leave. Even Amtrak investigators, Mr. Carter and Mr. Garofollo, never mentioned the Amtrak letterhead stationery during the investigative interviews with me.

f) When approached on January 3, 1986 by Mr. Carter in the presence of Mr. Garofollo, I was not informed of any specific charge or violation.

g) I was not invited to secure an impartial witness to the "investigative" interview during the interview, although Mr. Carter apparently arranged for the presence of his chosen witness in the room to vouch for his version of the interview.

h) I was never shown the envelope or its contents or asked to explain the contents. I have never seen the material in question.

i) I reemphasized during the interview with Mr. Carter that I expected only a resume from Ms. Watson.

j) I was never asked if I wanted the investigative interview tape recorded. If Mr. Carter had offered, I would have accepted as I had nothing to hide. I was trying to persuade them that Ms. Watson's resume was not Amtrak property.

k) Because during Mr. Carter's investigative interview with me, he did not explain that they found Amtrak letterhead in the envelope from Linda Watson, I did not address anything that the envelope might have contained except the resume that I was expecting.

l) I was never offered an opportunity to see Mr. Carter's investigative notes or report concerning my involvement in order to correct any errors.

m) I was never afforded an opportunity to sign a prepared statement summarizing my discussion of the subject.

n) I was never interviewed a second time to confirm Mr. Carter's or Mr. Garofollo's perceptions of what we discussed at our one brief meeting.

o) I was asked no questions by the investigators.

p) If Mr. Claytor or any other Amtrak official had contacted me, I would have provided him with a sworn statement like the statement contained herein.

I CERTIFY, UNDER PENALTY, OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Jodie Walton
JODIE WALTON

SUBSCRIBED AND SWORN TO BEFORE ME THE 6th DAY

OF March, 1986

March 18, 1988
My Commission expires

Larry A. Parker
NOTARY

To: The United States Congress
Washington, D.C. 20515

From: Linda Watson
Steger, Illinois

I, LINDA WATSON, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. From November 12, 1973 thru January 3, 1986 I was employed by Amtrak in a management position. My most recent position was Human Resource Representative in the Personnel Department at the 14th Street Maintenance Facility in Chicago, Illinois.

2. I reported directly to Val Racich, Regional Personnel Manager, from November 12, 1973 until approximately February 1984, when he was dismissed by Amtrak.

3. From February 1984 thru summer 1984, I reported to Henry Engel, Director of Personnel.

4. From summer 1984 through January 3, 1986, I reported directly to F. Thomas Blum, Regional Human Resource Manager.

5. In mid-December, 1985 I spoke with Jodie Walton about the passage of the Gramm-Rudman budget balancing law, and the implications for our jobs if Amtrak lost its federal support. Ms. Walton mentioned to me that Val Racich was in the process of updating and editing her resume so that she could begin a serious job search. I told Ms. Walton I would appreciate receiving help from Mr. Racich on my twelve year old resume also. That resume had never been updated since my 1973 Amtrak hiring. She stated she was sure that Mr. Racich would help with this update and that she would be having lunch with him during the holiday period. She offered to deliver my old resume to him if I gave it to her before I left on vacation. I agreed. I also mentioned that I wanted Mr. Racich to write me a letter of reference because he had supervised my work for 10 of my 11 years of Amtrak service. Ms. Walton predicted he would be happy to write such a letter. Then the subject was dropped.

6. During the following week, my last week before leaving on a two week vacation, I attempted for a few days to go to the downtown Amtrak personnel office to obtain a copy of my previous resume. However, because of the volume of work and shortage of staff I never found the time. Finally, realizing I would not be able to get my old resume from downtown files, I decided to at least take advantage of Ms. Walton's upcoming lunch with Mr. Racich and ask him to write a reference letter. lspw

7. On an impulse, one which I now regret, I grabbed a small handful of Amtrak stationery and slapped a "Post-it: (sticky) note on the stationery wrote a quick note to Mr. Racich requesting a letter of reference. I hoped Ms. Walton would fill in the details when she met with Mr. Racich. lspw

8. After I sealed the envelope and walked to the outgoing mail station, I mentioned to Cheryl K. Helsel, an employee in my small office, that I was asking Mr. Racich to write me a letter of reference and update my resume. I told her Ms. Walton would soon see Mr. Racich. I also told Ms. Helsel that I wasn't including my resume because I hadn't found it yet. She asked if Mr. Racich would likely do the same for her and I stated that I thought he would. I handed her the envelope so that she could reopen it and attach her own note. She later told me she had opened the envelope, attached her note, resealed it and delivered the resealed envelope to the 3rd floor mail facility, all while out of my presence. lspw lspw

9. Except for the above, I never spoke with Ms. Walton, Ms. Helsel, or Mr. Racich about the envelope until after Amtrak investigators (Mr. Blum and Ms. Thornton) completed their investigation of the incident on January 3, 1986.

10. On January 3, 1986, at approximately 9:00 a.m. [within two hours of my return from a two week vacation] Thomas Blum (Regional Manager) and Maureen Thornton (Regional Administrator) appeared in my office at the 14th Street yard. At the time of their arrival, I was interviewing a candidate for an internal promotion. Mr. Blum stated that he was accompanied by Ms. Thornton and that the two of them had something important to discuss with me.

11. After shutting the door of my office, the two presented me with an open interoffice envelope and asked me to "explain".

12. I opened the envelope and I immediately recognized the contents as the small package I had assembled to send to Ms. Walton. The small package, labeled "Personal and Confidential" contained approximately 17 sheets of blank Amtrak logo letterhead indicating an origination address of Personnel Department 1400 S. Lumber Street in Chicago. One note, from me to Mr. Racich, recited something about the Christmas Holiday and a request that he complete a letter of reference in my behalf. There was a similar adhesive note from Ms. Helsel requesting the same.

13. I responded to Mr. Blum, "What do you want to know?"

14. Mr. Blum asked if I sent the envelope to Val Racich and I replied, "No, to Jodie [Walton], as the envelope is addressed."

15. Mr. Blum asked what I could tell him about the stationery.

16. I responded "just like the note states, I was requesting from Val [Racich] a letter of reference from the time he was my boss. It was to be backdated." I repeated that it was to be backdated and indicated that I would have asked him (Mr. Blum) for the same. He stated "That would have been fine."

17. He then asked if I knew how serious this was. I replied, "No." Mr. Blum then asked me to step out of my office so that he could question Ms. Helsel by telephone. I left my office. Ms. Helsel was then called at home (she was absent from work that day due to illness.)

18. Within five to ten minutes, I was called back into my office and was told that I was being placed on adminstrative leave without pay, pending the results of an investigation. I was ordered to surrender my office keys and to leave the property immediately.

I was permitted to phone car pool riders and use the keyed bathroom before leaving but advised that removal of my personal possessions would be "premature."

19. To the best of my direct knowledge, the investigation promised by Mr. Blum consisted of a review of the envelope contents plus single simultaneous interviews with me and Ms. Walton and immediately thereafter a telephone interview with Ms. Helsel. Since the envelope was shown to me, the simultaneous interview with Ms. Walton had to have occurred without the availability of the envelope.

20. I was never again contacted in furtherance of the investigation by Mr. Blum, Ms. Thornton or any other Amtrak official.

21. A few days later, I received a call requesting that I appear in an office at Chicago Union Station. There I received my termination papers along with Ms. Helsel.

22. I wish to emphasize certain facts:

At No time prior to Mr. Blum's interview investigation did I

a) ~~I never~~ inform~~ed~~ Ms. Walton that I would enclose or had enclosed letterhead with my request to Mr. Racich for a letter of reference. In fact, all I ever told her was to expect a resume. LSPW

b) I never informed Mr. Racich that I would enclose or had enclosed letterhead. The only person who would have known that I enclosed the letterhead was Ms. Helsel, who saw the contents of the envelope.

c) Amtrak investigators Mr. Blum and Ms. Thornton never asked me whether Ms. Walton was expecting my envelope.

d) Amtrak investigators never asked me what Ms. Walton expected in the envelope.

22. Continued.....

e) I never told Amtrak investigators that Ms. Walton knew the envelope contained Amtrak stationery. Such a statement would have been false. She could not have known the envelope would contain Amtrak stationery unless Ms. Helsel told her. I made the decision to include the sheets of stationery on impulse when I sent the envelope and did not again speak to Ms. Walton until after the Amtrak investigation.

f) When approached on January 3, 1986, by Mr. Blum and Ms. Thornton I was not informed of any specific charge or violation.

g) I was not invited to secure an impartial witness to the investigative interview during the interview, although Mr. Blum apparently brought his witness into the room to vouch for his version of the interview.

h) During my only investigative interview. I was never informed by Amtrak investigators that Ms. Walton was also under investigation. If he had informed me, I would have told him that Ms. Walton was expecting my resume, and that was all. ISPW

i) I was never asked if I wanted the investigative interview tape recorded, something of which I most certainly would have approved. I had nothing to hide and was fully candid with them at all times.

j) I was never afforded an opportunity to see Mr. Blum's investigative notes or report concerning the investigation in order to correct any errors.

k) I was never offered By AmtRAK an opportunity to sign a prepared statement summarizing my explanation of the incident. ISPW

l) I was never interviewed a second time to confirm Mr. Blum's and Ms. Thornton's understanding of the one brief and perfunctory interview.

m) I was asked only three questions by the two investigators:

(1) "Explain" [the envelope]

(2) "Did you send this to Val Racich?"

(3) "Do you know how serious this is?"

22. Continued.....

n) My explanation of the circumstances surrounding this incident was stated to Mr. Blum without hesitation and as I have characterized it in this affidavit. to the extent of Mr. Blum's Request for information. 15pw

o) I have never received any performance evaluation containing a "below average" measurement and I consistently generated results above those expected of me.

p) I wrote Amtrak President Claytor a letter on January 10, 1986 immediately following Ms. Walton's firing, stating:

"Ms. Walton's knowledge of the contents of this envelope was to have been a resume which a former employee was to update on his home computer."

q) Mr. Claytor replied in a letter dated February 11, 1986:

"With regard to your comments concerning the termination of Ms. Kauzlarich Helsel and Ms. Walton, it would be inappropriate to comment on personnel actions taken with regard to other employees. I would note, however, that your statement in your letter of January 10, 1986 to me that Ms. Walton was unaware of the contents of the envelope forwarded by you to her is inconsistent with statements you made to Mr. Blum on January 3, 1986 during his interview with you concerning this matter."

r) If Mr. Claytor had contacted me I would have provided him with a sworn statement like the statement contained herein.

s) The stationery I enclosed in an envelope was letterhead which only three people in Amtrak would use: Ms. Helsel, Marie Pena (personnel specialist) and myself. This would make any abuse of the stationery immediately traceable to one of the three of us.

I CERTIFY, UNDER PENALTY, OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Linda Watson
Linda Watson

SUBSCRIBED AND SWORN TO BEFORE ME THE 5th DAY

OF March, 1986

Doris M. Davis May 1989
My commission expires

To: The United States Congress
Washington, D.C. 20515

From: Cheryl Kauzlarich Helsel
Park Forest, Illinois

I, CHERYL KAUZLARICH HELSEL, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. From August 5, 1974 through January 7 1986, I was employed by Amtrak. Since October 11, 1974, I have held the position of Personnel Clerk, a management position in the Personnel Department with the exception of a 1 1/2 year period of time during which I remained at home to care for newly born twins. For the last few years I worked at the personnel office of the 14th Street Maintenance Facility in Chicago, Il.

2. I reported to Val Racich, Regional Personnel Manager from October 11, 1974 until approximately February, 1984 when he was dismissed by Amtrak.

3. From February 1984 thru summer 1984, I reported to Henry Engel, Director of Personnel.

4. From summer 1984 through January 3, 1986 I reported directly to F. Thomas Blum, Regional Human Resource Manager.

5. On occasion Linda Watson, Human Resource representative, and I would discuss the threat of cuts in federal support for Amtrak and the implications for our offices and jobs. This was especially true during the period of the Gramm-Rudman law was being reported in the newspaper.

6. During the middle of December, Ms. Watson came out of her office and informed me that she had spoken with Jodie Walton, of the labor relations department. Ms. Watson told me she was going to ask Val Racich for a letter of reference back-dated to the time when he was in fact our supervisor and for assistance in updating her resume. I asked Ms. Watson if she thought Mr. Racich would also write me a letter of reference. Ms. Watson assured me that he probably would. She then handed me an envelope she had prepared and asked me to place a note into the envelope with her note.

7. The envelope Ms. Watson handed to me was addressed to Jodie Walton. Ms. Watson explained to me that she was sending her request for a letter of reference to Val Racich by way of Jodie Walton because Ms. Walton was to have lunch with Mr. Racich sometime soon.

8. I opened the envelope. Inside I found some Amtrak letterhead and a note to Val Racich from Linda Watson requesting him to write her a letter of reference. I wrote a yellow "post-it" note and stuck it to the stationery as Ms. Watson had done. I did not question the presence of the stationery in the envelope because I knew that sometimes people send things through inside mail in the same envelope for unrelated purposes. Moreover, since Ms. Watson was my supervisor, it was not my place to question her decisions.

9. I was later denied by Mr. Blum the opportunity to view the note I wrote to Val Racich. However, to the best of my recollection (it wasn't significant at the time) I wrote:

"Dear Val, Happy Holidays. It was sure nice working for a real boss. Would you please write me a letter of reference. Thank you. Cheryl."

After enclosing my note in the envelope, I resealed it and brought it to the mailroom for delivery to the addressee Jodie Walton. Ms. Walton worked at Chicago Union Station which was about 2 miles from my office.

10. On Friday, January 3, 1986, I was ill at home with gastro-intestinal flu, when I received a surprise telephone call at approximately 9:45 a.m. The person calling me was Mr. Blum. After identifying himself, he informed me that Ms. Maureen Thornton, an Amtrak administrator, was on the telephone line with him. Ms. Thornton greeted me and then never again made any statements during the phone call.

11. Mr. Blum asked me if I knew about the interoffice envelope being se~~t~~ to Jodie Walton which contained 18 sheets of Amtrak letterhead and two yellow post-it notes, one from me and one from Linda? I answered "yes." I was not asked to elaborate. Mr. Blum asked no further questions.

12. Mr. Blum replied that he considered this "serious" and that "for attempting to give Amtrak material to a non-Amtrak employee, you are hereby being put on administrative leave without pay pending the results of an investigation."

13. I told Mr. Blum that I didn't understand and he replied: "because you were attempting to give the materials to Val Racich."

14. I told him "I was asking Val for a reference letter and I was intending to ask you for one also, Tom". He replied, "That would have been fine."

15. Mr. Blum then stated I would be contacted in the middle of the next week concerning the results of the investigation and informed me; that, like myself, Linda Watson, was also being placed on administrative leave.

16. I spoke with Mr. Blum several more times by telephone that day and the following Monday. He never asked me any more questions. We mostly discussed pay and benefits.

17. During one telephone conversation, I asked Mr. Blum what I had done wrong. He replied that I had violated company policy. I asked him to specify a company policy I had violated.

18. Mr. Blum hesitated for an unusually long time and it sounded like he was flipping through pages. He finally stated: "Cheryl, this is hard for me to do." I stated that I didn't want to put him on the spot, but I needed to know.

19. He answered about 60 seconds later that my conduct was "dishonest and immoral." He added: "It would be dishonest falsification." He stated that if Val Racich wrote me a reference it would be false because he was no longer an employee.

20. I told him the letter would have been back-dated and it would not claim he was currently my supervisor.

21. On Monday, January 6, 1986, Mr. Blum called me to inform me that a decision had been made and he requested that I meet with him the next day in a vacant office at Union Station.

22. Ms. Watson and I arrived together for our respective meetings with Mr. Blum and Ms. Thornton. My husband introduced himself to Mr. Blum as our attorney and at first Mr. Blum tried to keep him out of the office although eventually he and Ms. Watson's husband were permitted to enter the room. Mr. Blum admitted them only on the grounds that they remain silent during the meeting.

23. Mr. Blum handed Ms. Watson and me respectively letters of dismissal which we read during Mr. Blum's silence. Mr. Blum then reminded us that we had both earlier asked if he expected us to resign and he informed us that now would be the appropriate time if we chose to do so. Our attorney advised us not to and we accepted this advice.

24. We then briefly discussed benefits. I requested permission to collect my personal effects. My request was denied. Mr. Blum said he would send them to me the next day, although I have not yet received all of my personal belongings.

25. I wish to emphasize certain facts:

   a) I have never spoken to Val Racich since he left the company in February 1984.

   b) I did not speak with Ms. Walton from early December (prior to this incident) until after Mr. Blum called me at home to ask me about it on January 3.

   c) I never discussed the contents of the envelope with anyone including Ms. Watson until after my January 3 telephone conversation with Mr. Blum.

   d) Ms. Watson never told me that the stationery was for Mr. Racich, although she did attach her note to the stationery. I did not really think about the connection.

   e) Amtrak investigators Mr. Blum and Ms. Thornton asked me the following question during their one investigative interview:

   Do you know about the interoffice envelope being sent to Jodie Walton which contained 18 sheets of Amtrak letterhead and two yellow post-it notes, one from you and one from Linda?

   I simply replied "yes," waiting for more questions.

f) Amtrak investigators Mr. Blum and Ms. Thornton never asked me whether I knew if Ms. Walton was expecting the envelope, and if so, what she was expecting in the envelope. If asked, I would have replied, "I don't know."

g) The manager who investigated Ms. Walton, Mr. Carter, never interviewed me.

h) I never told Amtrak investigators that Ms. Walton knew the envelope contained Amtrak stationery. Such statement would have been false because I hadn't communicated with Ms. Walton and Ms. Watson never informed me whether she had discussed the envelope with Ms. Walton.

i) When telephoned on January 3, 1986 by Mr Blum and Ms. Thornton, I was not informed of any specific charge or violation for which I was under investigation.

j) I was not invited to secure a impartial witness to the investigative interview during the interview, although Mr. Blum apparently arranged for a witness of his choice to be present to vouch for his version of the interview.

k) I was never informed by Amtrak investigators that Ms. Walton was also under investigation. If he had informed me, I would have told him that Ms. Walton would not have learned of the contents of the envelope from me.

l) I was never asked if I wanted the investigative interview tape recorded, something of which I would have certainly approved. I had nothing to hide and was fully candid with them at all times.

m) On the basis of "corporate policy" Mr. Blum denied me an opportunity to see his investigative notes or report concerning the investigation in order to correct any errors.

n) I was never offered by Amtrak an opportunity to sign a prepared statement summarizing my explantion of the incident.

o) I was never interviewed a second time to confirm Mr. Blum's and Ms. Thornton's brief one-question perfunctory interview.

p) My explanation of the circumstances surrounding the incident was stated to Mr. Blum without hesitation and as I have characterized it in this affidavit to the extent of Mr. Blum's request for information.

q) My performance evaluations have all been "good" to "excellent". My most recent evaluation was even better than in the past.

r) In a February 11, 1986 letter responding to my January 11, 1986 letter requesting written clarification of my dismissal, Mr. Blum wrote:

> "You wanted to know in what way you showed lack of judment [sic] and dishonesty. By sending Amtrak Personnel letterhead stationery to Val Racich, a former employee known to have interests adverse to this company, you clearly did not use good judgment. You were dishonest by asking Mr. Racich, who is no longer your supervisor, or an employee of Amtrak, to write you a reference letter on Amtrak Personnel Department letterhead stationery, as well as misappropriating company materials.

Mr. Blum also wrote:

> "At that time [Jan. 3, 1986 telephone interview at 9:45 a.m.] you were given the opportunity to discuss this matter with me, and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with facts concerning the incident. You admitted your actions to me and I had no choice but to remove you from your position."

s) In a Jan. 11, 1986 letter to President W. Graham Claytor, I wrote:

> "My crime" was to attach a note to a friend and former Amtrak employee, the package contained eighteen sheets of Amtrak stationery. Notwithstanding the fact, that in light of many other management investigations past and present being conducted in involving "crimes" much costlier and devious than mine. I consider my termination extremely excessive, In view of my clean eleven years of loyal service to Amtrak."

t) On Feb. 11, 1986 Mr. Claytor responded to other portions of my Jan. 11, 1986 letter but did not explain the use of termination as a punishment for my misjudgment. In fact no company official has explained to me why it was necessary to employ the most severe form of discipline, termination, in my case.

u) If Mr. Claytor or any other Amtrak official had contacted me, I would have provided Amtrak with a sworn statement like the statement contained herein.

I CERTIFY, UNDER PENALTY, OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Cheryl Kauzlarich Helsel
Cheryl Kauzlarich Helsel

SUBSCRIBED AND SWORN TO BEFORE ME THE 7 DAY

OF March, 1986.

Fernando Romero B.
My Commission expires

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES JAN. 19 1987
ISSUED THRU ILLINOIS NOTARY ASSOC

To: The United States Congress
Washington, D.C. 20515

From: Val M. Racich
Evanston, Illinois

I, VAL M. RACICH, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. I was a management employee of Amtrak from September 22, 1971 until February 24, 1984. I served in Chicago, Illinois as Regional Manager of Human Resources (Personnel) for the entire period. I also served for 6 months (dual capacity) during 1983 as Director of Personnel for Amtrak. I was involuntarily terminated without explanation.

2. I have litigation pending against Amtrak in federal court, Northern District of Illinois on the basis of unlawful discharge and age discrimination.

3. That claim is based upon four probable cause findings in my favor by the Illinois Department of Human Rights and the federal Equal Employment Opportunity Commission. All of the fact-finding was completed over one year ago as I understand the process, no new documentary evidence can be added in the case.

4. Since April, 1985, I have been employed in the position of Personnel Manager, Operating Service Center, Marshall Field and Co., a national retailer headquartered in Chicago with stores throughout the midwestern and southwestern states, with approximately 12,000 employees nationwide, and with approximately $800 million in sales.

5. I hired Linda Watson and Cheryl K. Helsel and directed their work from the date of their hirings (1973 and 1974 respectively) until I left Amtrak.

6. In January 1975, I hired Jodie Walton from a unionized reservations position into a management position on my payroll. She reported to me and to James Tipton, Regional Manager of Labor Relations through approximately January 1978, when Mr. Tipton began to fully supervise Ms. Walton.

7. In early 1981 Amtrak's federal funding was seriously threatened. Ms. Walton approached me requesting assistance in preparing a resume, her first as a professional. I provided her that assistance because I had a full under standing of her employment experience.

8. In early December 1985, I received a telephone call from Ms. Walton who again expressed concern about Amtrak's future and federal funding. We discussed the possibility that Amtrak might soon consist only of the Northeast Corridor and that she would be adversely affected by the closing of the other operations. Ms. Walton asked me to update her 1981 resume. I offered her that assistance. We agreed to meet for lunch on Monday, December 23, the first day of my vacation.

9. Ms. Walton immediately mailed me her resume for review and I noted recommended changes and restylizing. On both December 23 and 24 she was unable to meet me because of requirements at work.

10. In early January, 1986, Ms. Walton called me from a pay telephone at Chicago Union Station. She informed me that she had been placed on administrative leave pending an investigation. She stated she had not understood why she was suspended but that it involved her being the addressee or an undelivered envelope. I asked her what was in the envelope and she responded that she didn't know because she never received it. She stated that it was described to her as "unauthorized company material".

11. In later conversations she told me that she had learned that the "unauthorized company material" was blank Amtrak stationery which were apparently intended for delivery to me.

12. Since that time, Ms. Walton has occasionally called me to further inform me of developments in this situation. Since this disruptive incident, I have not actually met with Ms. Walton to assist her in revising her resume. In fact, I have not seen Ms. Walton for approximately 12 months.

13. From the time of my departure from Amtrak on February 24, 1984 through today, I have had no communication with Cheryl Helsel.

14. Since my departure, I had only one communication with Linda Watson. She telephoned me in early February, 1986 to ask me about an incident which occurred around July 1, 1983 when she was assigned the role of investigating an EEO complaint by Jodie Walton. I informed Ms. Watson that I completely remembered how she was assigned the task of conducting the fact-finding on the Walton EEO complaint. This assignment had occurred because these investigations were required to be done locally and the local EEO investigator, Kelly Zanders, was disqualified as an investigator because she had been named as a witness in the complaint. I further informed her that I remembered that she was removed from the investigation following her strenuous objection that she should not be compelled to sign a report falsely claiming to have completed the investigation. I reminded her that as her supervisor, I also had strongly protested the matter to Peter Chen, Amtrak's corporate EEO manager. Mr. Chen had told me that the legal department had "framed" Ms. Watson's fact-finding report and that it was being telecopied to her for retyping and signature. I told Mr. Chen that since the investigation had in fact not been completed, this report would be both false and contrary to company policy. I further reminded Ms. Watson that I had immediately telephoned her following this conversation with Mr. Chen, whereupon she had informed me that she had refused to sign the report as she had been directed.

15. Although removed from her management position in January 1986, Ms. Walton was not terminated from Amtrak. Apparently she was allowed to exercise her seniority rights as a member-in-good-standing of the Brotherhood of Railway and Airline Clerks union.

16. During my twelve year tenure at Amtrak, in the position of Regional Manager of Personnel, I was responsible for the administration of labor agreements, including the handling of disciplinary hearings and the seniority process.

17. If Amtrak had sought to completely terminate Ms. Walton from the company, it would have been obligated to accord her a formal due process hearing before it could deprive her of the right to exercise her seniority. The company did not, apparently, seek to deprive her of her seniority. She reports that she is currently working for Amtrak in a unionized position.

18. If the company had subjected her to a disciplinary hearing, it would have had to prove serious misconduct to justify her termination (i.e. denial of her seniority rights). The burden on Amtrak, established by contractual obligation is to set forth and prove the charges.

19. Proof that Ms. Walton was merely the addressee on an envelope containing Amtrak stationery, would be insufficient to formulate the required charges and specifications. Hence, she could not even be brought up on charges.

20. From my experience when credible and reliable proof exists of misconduct by a management employee who possesses union seniority rights, the company removes the employee from the management position, waits for the employee to attempt to exercise seniority rights, and then charges the employee with a rule violation. It is then through a formal, transcribed, due process hearing before a hearing officer with union representation that guilt determined and punishment, if appropriate, is assessed.

21. I infer, based on my past experience, and from Amtrak's failure to seek to deprive Ms. Walton of her seniority rights, that the Corporation understood that credible and reliable evidence of misconduct simply did not exist.

22. I wish to emphasize certain facts:

a) I received by mail Jodie Walton's resume for updating in early-December, 1985

b) Ms. Walton and I planned to revise and update her resume on December 23, 1985 during a lunch meeting

c) Prior to her removal, Ms. Walton never informed me that Ms. Watson and Ms. Helsel were seeking letters of reference.

d) Ms. Walton herself has never requested of me a letter of reference.

e) Amtrak did not contact me regarding this incident to inquire of my knowledge of this incident.

f) If Ms. Walton, Ms. Watson, or Ms. Helsel sought a letter, I would have been happy to write such a letter. However, I would do so on my private stationery and not on Marshall Field & Co. stationery. Nor would I ever consider writing a letter of reference on Amtrak stationery.

g) If I had been consulted, by either Ms. Watson or Ms. Helsel, I would have indicated the folly of preparing a back-dated reference letter. I would have told them that I think it is even more impressive to prospective employers to receive a letter from an applicant's former supervisor who is willing to take the time and trouble to write a complimentary letter several years after he ceased supervising them and left the company.

h) Despite the fact that I am involved in litigation with Amtrak, I did not and would never seek nor accept Amtrak property, including corporate letterhead stationery. As I indicated above, the fact-finding period in my litigation was completed in February, 1985 so Amtrak representations that the stationery was to be sent to a party with hostile interests to the Corporation imputes motives to me which are implausible, slanderous and extremely distressful.

I CERTIFY, UNDER PENALTY, OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Val M. Racich

VAL M. RACICH

SUBSCRIBED AND SWORN TO BEFORE ME THE ______ DAY

OF MAR 6 1986, 1986

Nelia Munoz

March 21 - 86

My Commission expires

To: The United States Congress
Washington, D.C. 20515

From: C. Thomas Helsel
Park Forest, Illinois

I, C. THOMAS HELSEL, UNDER OATH DO HEREBY
DEPOSE AND SAY AS FOLLOWS:

1. I am the husband of Cheryl Kauzlarich Helsel. I am a practicing attorney admitted to the bar in the State of Illinois. I was a police investigator for seven years prior to becoming a licensed attorney.

2. On January 3, 1986 my wife informed me that she had been placed on "administrative leave" by Mr. Thomas Blum, her manager at Amtrak.

3. On January 6, 1986 she informed me that Mr. Blum had requested her to attend a meeting the following day concerning his investigation of the incident underlying her "administrative leave". She asked me to attend the meeting with her to provide her counsel and moral support. I agreed. We decided to meet at the Blue Beard Restaurant at Chicago Union Station, at 12:30 p.m. on January 7, 1986.

4. I arrived at the Blue Beard Restaurant at about 12:00 noon and was seated immediately at a table in close proximity to a table which was occupied by a man and woman.

5. While reviewing the menu, I overheard the man and woman discussing a "Cheryl", which caught my attention because of my wife's given name. Less than a minute later I heard the woman utter the word "resume".

6. A few seconds later the woman stated more loudly "I don't know anything about the letterhead." She might have said "I didn't know anything about the letterhead."

7. As the woman's voice had become increasingly loud, the gentleman at this point started looking around, the room and then looked two or three times in my direction. He appeared to be uncomfortable. He then stated: "Lets go back to the office."

8. The gentleman and woman stood up at the table, and I rose also and approached the woman to introduce myself and to determine who she was.

9. She identified herself as Jodie Walton.

10. I said "I'm Tom Helsel, Cheryl's husband.

11. She then introduced me to the gentleman, "This is Joe Carter". She then told Mr. Carter that I was Cheryl's husband and that I was an attorney.

12. Mr. Carter shook my hand and commented that I "looked like an attorney." Everyone smiled.

12. I stated "I guess we all know why we're here today."

14. We said goodbye and they departed. Mr. Carter and Ms. Walton left the restaurant.

15. At 1:00 p.m. my wife and I as well as Linda Watson and her husband arrived at the office of Mr. Blum designated for the meeting. Mr. Blum only permitted me to attend the meeting on the condition that I remain silent and ask no questions, notwithstanding the fact that I had informed him that I was their chosen attorney. Ms. Watson's husband was also permitted to attend on the same conditions.

16. Mr. Blum gave my wife and Ms. Watson their letters of termination to read and he asked if either of them had any questions.

17. My wife asked about a service letter, which Mr. Blum promised.

18. Mr. Blum asked if they were willing to resign. Both, after seeking my advise, refused.

19. My wife inquired about her personal belongings and Mr. Blum responded he would mail them to her.

20. My wife then stated: "After these years of loyal service, don't you think this is a pretty shabby way to treat me. No one even asked me what happened."

21. Mr. Blum responded that there had been a thorough investigation.

22. My wife responded: "How could there be a thorough investigation if no one talked to me about it.

23. My wife then turned to Ms. Maureen Thornton and said "I'd like to ask you something Maureen. Do you enjoy doing this? Because you've been doing an awful lot of this lately."

24. Ms. Thornton replied: "Oh, no Cheryl. I would rather be any place but here.

25. The meeting disbanded at this time.

I CERTIFY, UNDER PENALTY, OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

C. Thomas Helsel

SUBSCRIBED AND SWORN TO BEFORE ME THE [illegible] DAY

OF March, 1986.

My Commission expires

STATEMENT FROM TOM BLUK 1-3-86

At 9:30 A.M. on 1-3-86, I entered the Personnel Office at 1400 S. Lumber Street accompanied by Miss Maureen Thornton and entered Linda Watson's office and at that time, I told her I needed to speak to her about a serious matter. Maureen Thornton and I closed the doors and I handed Linda the interdepartmental envelope with the subject matter inside. I asked her to tell me everything she knew about the envelope and its contents. She said she remembered it and asked me what I wanted to know. I told her that I needed to know everything that she knew about it. She started by saying that she was sending these documents so Val could write her a reference letter seeing how she used to work for him. I asked her why she was asking for a reference letter from him at this time on Amtrak letterhead. She stated she did not think about it at the time but wanted it on Amtrak letterhead. I asked her if it was going to be backdated and she said, "yes." I asked her if Jodie Walton was expecting the envelope, her answer was "yes." I asked her if Jodie knew what was in the envelope, her answer was "yes."

I asked Linda if Jodie was going to take it to Val and she said, "yes." I then asked her if Val knew what it was and was expecting it and she said, "yes." I asked Linda if she knew the seriousness of this incident and she replied, "no". At that time, I told her that it was very serious and that I needed to talk to Cheryl about it. I told her I was going to ask her to leave the room so I could talk to Cheryl in private. At that time, she left the office after giving me Cheryl's home phone number.

I called Cheryl at home and told her that Maureen was on the other line listening and that I needed to talk to her. I explained to Cheryl about the envelope [illegible] asked her to tell me everything that she knew about it

She started out by saying that Linda had told her that Val was going to write a reference letter for her and that if she wanted one she should write a note to Val which she did. She stated that she did not know it was being sent on letterhead but she did know that it was going to Jodie Walton. I asked her if she knew the seriousness of this incident and she said "no." I explained to her about the unprofessional manner and the discredit to the Corporation. I told her at that time that because of the serious violations that have occurred because of her actions that I was placing her on administrative leave without pay. I told her that I would let her know next week the outcome of the investigation. She asked me how it could be so serious and I again explained the seriousness of the violations and I again reemphasized the she was on Administrative leave without pay. I asked her if she understood and she said "yes." At that time I hung up the phone.

I called Linda back into the office. Maureen joined us and I informed Linda that due to the seriousness of her actions she was being placed on Administrative leave without pay pending the results of the investigation. She asked me how long it would take. I told her that we should know something by the middle of next week. At that time, I asked for her keys to the office and explained to her that she would have to leave the property. She gave me her keys and asked if she could use the phone to call her riders to see if they could find other transportation home. I said, "yes," She called Ron Albers in Material Control and they assured her that they could find other transportation home. She then asked if she could use the bathroom before she left. I told her "yes." She went upstairs and returned in approximately five minutes, put on her coat and started to leave; she then asked me about her personal belongings in the office and I told her not to worry about it; that we still had to wait for the results of the investigation. She stated that she was familiar with administrative leave and that she never expected to return. I told her that that was very pessimistic and that I would let her know something as soon as I knew something. At that time, she left the office.

1/3/85

The following represents a summary of what took place between 9:30-10:30 am on January 3, 1986, in the Human Resources office at 1400 South Lumber Street. It is presented in dialogue form because of the notes I took during the discussions. It is not meant to be a word-for-word report of what was said.

Tom: Linda, I asked Maureen to be here because there is something very important we need to discuss. Would you tell me what you know about this correspondence? (envelope handed to Linda)

Linda: Oh, it was for Val. What about it?

Tom: Why?

Linda: I would like for him to do me a letter of reference should I ever need one.

Tom: Why did you send company letterhead?

Linda: It could have been a plain sheet of paper, I really don't care.

Tom: Why did you send it through the interoffice mail?

Linda: I was sending it to Jody.

Tom: She knew it was coming? She was going to take it to Val herself?

Linda: Right. Is there a problem with that?

Tom: Yes

Linda: Why?

Tom: First of all, you were sending Val, an ex-employee, company materials.

Do you know how serious this is?

Linda: No, I don't.

Tom: I want to talk to Cheryl too. She also has a note in there.

Discussion of the letter of reference:

Linda: ...and I told him to put in there during his time frame...
Tom: then he would have to back date it.

Linda: It was for my personal file if I ever had to use it.

Tom: This is very serious.

Linda: May be.

Tom: By furnishing letterhead...
Linda: I didn't realize that would be a problem.

Cheryl was called at home and Tom advised her that I was on the phone with them.

Tom: I am calling about an envelope that you and Linda had sent to Jody. (Tom described the contents) Do you remember that?

Cheryl: Yes

Tom: Why did you do it?

Cheryl: For future reference; I worked for him.

Tom: Why on Amtrak letterhead, Cheryl?

Cheryl: I didn't really ________. I just wanted a letter.

Tom: The envelope was sent to Jody and it was obviously (going to Val).

Cheryl: ...they were going to have a reference letter made up and I would like one too, and if I needed one from you (Tom) I would have liked one too.

Tom: And I would have given it to you.

Are you aware of how serious this is?

Cheryl: No

Tom: You sent an ex-employee Amtrak material...which is illegal. You have furnished him with Amtrak material and he is not entitled to it. That is the main thing.

...credibility, professionalism...it is very seriously wrong.

I have no other choice but to place you on Administrative Leave of Absence without pay pending the results of this thing. I will get the results from Washington about the first of next week, but right now you should consider yourself on LOA without pay. I will be calling you at home, writing you, or calling you into the office to further discuss this.

Cheryl: I don't understand. Can you fill me in a little more. Like I said, I would like a reference letter and enclosed my note. What's wrong?

Tom: You have furnished materials to an ex-employee. You don't know how he was going to use it.

Cheryl: I thought the letterhead was going to Jody.

Tom: I have already talked to Linda...

This was immoral, dishonest and everything else. Very serious implications against you and Linda - it is out of my hands. It's in the decision making process in Washington, D.C. Linda is not here right now. I will be back to you sometime next week.

Linda was asked to come back into the office.

Tom: I have talked with Cheryl and asked her the same questions concerning the correspondence. I explained the seriousness of what you have done and unfortunately have to place you on Administrative Leave of Absence without pay and there is nothing else I can do.

I will need your keys; you will have to leave the property.

I will get to you the first of next week after there is a decision; it is in Washington right now and I have no more control over it.

Linda: I am not going to lie to you about it.

Tom: There is nothing more I can do. They asked Maureen to come with me, for me to talk to you and take steps to place you on Administrative Leave of Absence.

Linda made a phone call to advise the people she drove with to find other transportation home.

Linda asked about her personal possessions.

Tom: I will let you know as soon as I know.

Linda: From every Administrative LOA I have ever known, I won't be back. What's the next step?

Tom: I will be back to you next week. It's in the hands of Washington, Linda, which means it is totally out of my control. I am very, very sorry.

I spoke to Cheryl and told her the same thing.

Linda: You mean Cheryl is on an Administrative LOA too?

Tom: Yes

Maureen E. Thornton
01/03/86

STATEMENT FROM J. CARTER - 1-3-86

At 9:50 A.M. Tom Blum called me and advised that Linda Watson admitted to him that she had planned to send Val Racich some letterhead via Jodie Walton. Moreover, Jodie was aware that the letterhead was coming, knew what to do with it and that Racich was expecting the material.

I met with Jody, with John Garafolo as a witness, and told her what Tom relayed to me. She admitted that she was aware that she was to receive the Company material and that Racich was going to use it to prepare resumes for Cheryl Kauzlarich and Linda Watson. Jody advised that Linda and Cheryl, like herself, were concerned about the budget and wanted the resumes prepared.

I advised Jodie that this was a serious offense and asked why she got herself involved. She answered that she didn't consider it a big deal. She said that she told Linda that she would deliver the material the next time she saw Racich. I asked Jodie when she planned to see Racich and she first replied she didn't know. Jodie continued to talk. As she talked, she said that Linda, Cheryl, Racich and herself were supposed to have lunch together around Christmas but the material never arrived.

I told her that it was a serious offense and that Tom was going to place Linda and Cheryl on administrative leave and I said that we were going to do likewise to her. Jodie said, "this is ridiculous, Jesus Christ this company won't quit messing with me, those A-holdes, are you serious?" I asked her if she had keys to the office and she said yes, and I asked for her key and asked her to leave the property. Jodie said ok and left at 9:55 A.M.

J W Carter J.

J. W. CARTER
LABOR RELATIONS - CHICAGO, ILLINOIS
JANUARY 3, 1986

STATEMENT FROM J. A. GAROFALO - JANUARY 3. 1985

This morning I was asked to go to the Personnel office by Tom Blum. I met with Tom and Joe Carter at that time, they explained to me that they had a problem with Jodie and Linda and Cheryl and that all they wanted me to do was to sit in on a discussion between Jodie and Joe Carter as a witness. Tom said that I would be called in my office as to when I should go down to Joe Carter's office.

Approximately 9:45 A.M. Tom Blum called me and asked me to report to Joe Carter's office. At 9:50 A.M., after receiving Tom Blum's phone call, Joe explained to Jodie there had been some problem with Linda and Cheryl sending Company materials to Val Racich, and that they indicated that Jodie was going to deliver the physical contents being mailed to Val. He asked her if she was aware of this, he also asked her why she would do this. She said that Linda asked her to deliver this package the next time she saw Val. She said she hadn't seen Val in 6 months but has spoken to him and didn't know how or when she was going to get the package to him. She indicated that Val was going to write resumes for Linda and Cheryl that Val has an Apple computer.

Joe again asked how are you going to get this material to Val. She indicated that the three were going to get together during Christmastime, but that never happened. Joe indicated that Linda and Cheryl were going to be placed on administrative leave and that Jody would also be placed on administrative leave. She said this is ridiculous, Jesus Christ, this company. Why don't they leave me alone and made reference to A-holes, (not quite sure who se meant). Joe asked if she had a key, she said "yes", a key to the outer office, and gave Joe her key. At 9:56 A.M. the discussion ended and she left the room.

J. A. GAROFALO
MANAGER INTERNAL AUDIT-MIDWEST
JANUARY 3, 1986

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois 60606

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
#P-456-073-973

Amtrak

February 11, 1986

Ms. Linda Watson
3409 Schultz Lane
Steger, IL 60475

Dear Ms. Watson:

I am in receipt of your letter dated January 10, 1986.

You have requested answers to many questions throughout your letter, so I will attempt to answer them in the order in which they were presented.

You asked for clarification concerning the date your Administrative Leave was effective. Your Administrative Leave without pay was effective January 3, 1986. All benefits and pay ceased on midnight of January 3, 1986. This information was relayed to you verbally, in a telephone conversation with me, at approximately 3:30 p.m. on January 3, 1986.

With regard to your inquiry as to why you were placed on Administrative Leave without pay, it is Amtrak's policy that all management employees who are placed on Administrative Leave pending the results of an investigation into matters concerning policy violations do not remain in a pay status. In our telephone conversation of January 3, 1986, you asked me about a specific individual, who you thought had been paid while he was on Administrative Leave. In this case your understanding was incorrect, and the individual in question was not paid and did not receive benefits during his Administrative Leave.

You further asked what specific practices and procedures I referred to in your termination letter. In my January 7, 1986, letter to you I stated that, "your conduct violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct." I was referring to Amtrak's Procedures Manual PA-16 (Termination Policy), and Amtrak's Rules of Conduct, both of which you were familiar.

(Continued)

Your next two questions were, "You state that I used "lack of judgment." In what way? You state that I was "dishonest". What was my dishonest act?" By sending Amtrak Personnel Letterhead stationery to Val Racich, a former employee known to have interests adverse to this company, you did not use good judgment. You were dishonest by asking Mr. Racich, who is no longer your supervisor, or an employee of Amtrak, to write you a reference letter on Amtrak Personnel Department letterhead stationery.

You then asked me to clarify to what past incidents I was referring. The past incidents I was referring to were the previous investigations concerning repairs to your private auto by Amtrak employees on Amtrak property, the Officer Hrubec investigation, the missing Onboard Service test investigation, and the Steno test investigation, all investigations in which you were involved. On all of these incidents you were counseled by either me or Mr. Engel, concerning credibility and confidentiality within our department. I had also talked to you and all members of my staff, in various staff meetings, concerning adherence to policy and procedures, credibility and confidentiality.

You also inquired as to whether you were discharged for a past incident or sending intra-office mail to J. Walton. You were terminated from the employment of Amtrak for your unauthorized attempt to furnish Amtrak Personnel Department letterhead stationery to an ex-employee of Amtrak, which you admitted to me. In light of your past counselings, you were knowledgeable that misconduct of this nature would not be ignored or tolerated.

With regard to the return of your personal belongings in the office, I personally made the decision to send these items to your home and I collected them from your office and packed them. Contrary to your statement, other staff members did not perform these tasks. The decision to send your personal items rather than allow you to collect them was done to alleviate any awkwardness that might have surfaced by your appearance. Considering the circumstances, I still feel that this was the best decision.

Your possessions were sent to your home, via bonded courier, on January 15, 1986. On January 16, 1986, your Service Letter was remailed to your home due to an administrative error made on the previous letter of January 13, 1986.

(Continued)

With regard to outplacement services for you, the decision is that there are non available for you.

You also stated in your letter that you did not feel that the investigation that was conducted was fair, open and honest. The investigation that was done included our discussion in your office on January 3, 1986 at 9:30 a.m. At that time, you were given the opportunity to discuss this matter with me, and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with facts concerning the incident. You admitted your actions to me, and I had no choice but to remove you from your position.

With regard to your request for various documents, a copy of your entire personnel file is enclosed. This file includes data on salary, promotions, and performance evaluations. There are no working files with regard to you other than your personnel file. With regard to documents concerning the investigation leading to your termination, all investigative records are the sole property of Amtrak and corporate policy prohibits their disclosure to you.

Sincerely,

Frank T. Blum
Division Manager
Human Resources

Enclsoure

National Railroad Passenger Corporation, 400 North Capitol Street, NW, Washington, DC 20001

Amtrak

February 11, 1986

Ms. Linda Watson
3409 Schulze Lane
Steger, IL 60475

Dear Ms. Watson:

I have reviewed your letters of January 10 and January 13, 1986, in which you suggested that your and two other employees' recent terminations were in conflict with Amtrak's Mission Statement and that misrepresentations about your termination have been spread by officials within your department.

With regard to your termination, that action was taken only after your department had carefully considered your conduct and you had an opportunity to explain your actions. The Personnel Department concluded that your involvement in an attempt to provide company materials to a non-Amtrak employee, whose interests were known to be adverse to the company's, not only violated Amtrak's own business standards and procedures but also our Rules of Conduct. Your actions also demonstrated a serious lack of judgment. Accordingly, the department decided that it could no longer continue to employ you in a position of trust and responsibility. It is also my understanding that you had previously been warned in the past that acts such as this would not be tolerated by the Corporation. [redacted] I would note, [redacted] in your letter of January 10, 1986 to [redacted] Walton was unaware of the contents of the envelope [redacted] you to her is inconsistent with statements you made to [redacted] on January 3, 1986 during his interview with you [redacted] matter.

With regard to your statement that Messrs. Engel and Blum made misrepresentations concerning your termination, I can assure you that both men deny ever telling any persons that the envelope in question contained a personnel file or that you were terminated because you had "leaked" confidential information to Mr. Racich. Apparently, whoever made such statements to you was misinformed. Circumstances surrounding the termination of employees are confidential and are generally not to be discussed except between persons who legitimately have a need to be aware of them. Unfortunately, rumors and misstatements made by persons who do not have knowledge of the true facts do occur and, regrettably, that appears to have happened with regard to your

termination. Although I have no control over such rumors, I do not believe that the management officials involved in your termination have made such misrepresentations or have failed to maintain confidentiality concerning the circumstances of your termination.

While I can appreciate that you do not agree with the decision to terminate your employment, nonetheless it was a decision made by your department after thoughtfully considering your serious lack of judgment and misconduct in sending unauthorized Amtrak materials to Mr. Racich. Accordingly, based on all the information I have obtained, I cannot disagree with the department's decision to terminate you from your position.

Thank you for bringing your concerns to my attention.

Sincerely,

W. Graham Claytor Jr.

W. Graham Claytor, Jr.
President

January 10, 1986

Mr. Graham Claytor
President, Amtrak
400 N. Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

It is almost impossible for me to describe how my recent termination from Amtrak has affected me, as well as the others involved in this incident, mentally, physically, emotionally, and created a severe financial hardship to our families.

In that on January 3, 1986, I was placed on Administrative Leave without pay, along with Cheryl Kauslarich-Helsel and Jodie Walton, pending the results of an investigation of an envelope that was sent Intra-Office mail, Personal & Confidential, to Jodie Walton. On January 7, 1986, I, along with Ms. Kauslarich-Helsel and Ms. Walton, were terminated from Amtrak, based on the results of that investigation. After devoting myself to my position for the last 13 years, I find it incredible that such a harsh and unusual punishment has resulted from such an unfair and arbitrary investigation, which was pre-judged. In light of the many investigations being conducted, both internally and externally, much more serious offenses have occurred, with no repercussions or punishment, and in fact, have often resulted in promotions. The most distressing factor in this thorough investigation, which was conducted more like a witch-hunt, is that **Ms. Walton's knowledge of the contents of this envelope was to have been a resume**, which a former employee was to update on his home computer. With the current economy and Amtrak's possible elimination of government funds, I felt it was necessary to get these things in order. However, due to the work flow in the office and preparation for vacation, this resume was not enclosed. The contents of the envelope contained approximately 17 sheets of Amtrak letterhead, along with a note from myself, to a former employee, Val Racich, of whom I had worked for over 10 years, requesting a letter of recommendation to be backdated during his tenure. Ms. Kauslarich-Helsel attached the same.

It saddens me that our own Human Resource Department has no remorse for the treatment of their own employees after so many years of loyal and devoted service. As indicated in your service letters, "Nothing is more valuable to this Corporation than employee loyality, dedication, and experience." I have always taken great pride in my job and tried to achieve a climate of trust, cooperation, and mutual confidence, as well as being helpful, friendly, and caring with those I have come into contact. If you were to review my personnel file, it will show that I am a Team Player. My performance during my service with Amtrak, fulfilled all major requirements and generated results, and that I consistently generated results above those expected of me. I have never subjected our department or the Company to any deliberate criticism or embarrassment, in spite of several past incidents of extreme intimidation and harrassment by my own department heads.

I am asking you to put a halt to the deliberate and deceiving lies in which Hank Engel, Human Resource Manager-West, has indicated to several managers, that Tom Blum, Human Resource Manager-West, told him, that I was personally contacted by Val Racich and asked to get him a personnel file, and that this file was a part of the envelope contents. They have also indicated that Ms. Kauslarich-Helsel's note was quite lengthly and had many derrogatory and detrimental things against Amtrak. They have also indicated that Company information has leaked to this former employee and accusations have been made that this must be the source. Contrary to popular belief, Mr. Claytor, I assure you, that my integrity is much more important and have had no involvement what so ever in these accusations.

It is even more distressing that after all the thousands of dollars that have been spent on management training and development programs, that these principles are not being carried out at the manager level and above, and that managers and above are allowed to play GOD and dictate policies that they fail to follow themselves.

Mr. Claytor, if I felt that I was deliberately violating any Company Rules, do you really think that I would have taken a chance to jepordize my job, along with the others, by sending this through our own mail service?

I have no other alternative to believe that I, along with the others, have been set-up and used as a sacrificial lamb in this matter.

Attached is a copy of your Mission Statement, which is completely contradiotory to the facts presented in this letter.

I await your reply.

Sincerely,

Linda Watson

Linda Watson
Former Employee
Chicago Human Resource Department

cc: Myron Zeits
Human Rights

CARDISS COLLINS, ILLINOIS, CHAIRWOMAN
MAJOR R. OWENS, NEW YORK
TOM LANTOS, CALIFORNIA
GERALD D. KLECZKA, WISCONSIN
MATTHEW G. MARTINEZ, CALIFORNIA

NINETY-NINTH CONGRESS

Congress of the United States
House of Representatives
GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, DC 20515

ALFRED A. (AL) McCANDLESS, CALIFORNIA
PATRICK L. SWINDALL, GEORGIA
THOMAS D. (TOM) DeLAY, TEXAS

(202) 225-7520

January 24, 1986

W. Graham Claytor, Jr.
President
National Railroad Passenger Corporation
400 N. Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

It has come to my attention that Ms. Jodie Walton of the Chicago Amtrak Labor Relations Department was recently dismissed as a result of an Amtrak investigation of alleged misconduct. As you know, Ms. Walton has been a witness during this subcommittee's current investigation of Amtrak.

To review Ms. Walton's dismissal, the subcommittee requests an Amtrak report on this matter.

Thank you in advance for your cooperation in this matter.

Sincerely,

Cardiss Collins

CARDISS COLLINS
Chairwoman

CC:cm

cc: Congressman Alfred McCandless

National Railroad Passenger Corporation 400 North Capitol Street, NW, Washington DC 20001

Amtrak

February 4, 1986

Honorable Cardiss Collins
Chairwoman
U. S. House of Representatives
Government Activities and Transportation
Subcommittee of the Committee on
Government Operations
Rayburn House Office Building
Room B-350-A-B
Washington, DC 20515

Dear Madam Chairwoman:

I am responding to your January 24 letter requesting a report on the recent decision to remove Ms. Jodie Walton from her position as an Amtrak Labor Relations Supervisor.

I recently responded to Representative Yates on this matter. I can understand your concern that Ms. Walton not be a victim of retaliation because of her appearance before the Subcommittee during the September 13, 1984 hearings. I assure you that our action was in no way based on her testimony there.

Ms. Walton has been subject to probation on several occasions in the past, both prior to and after her appearance before the Subcommittee, for failures to perform her assigned duties satisfactorily. You will recall that I wrote to Representative Yates on October 16, 1984, with a copy to you, concerning her probation. I would now like to provide you with the details surrounding the most recent incident in which she was involved which resulted in her dismissal.

During December 1985, a packet of company material addressed to Ms. Walton was intercepted by the Division Manager Human Resources, Chicago. The packet contained numerous pieces of Personnel Department stationery with notes from two Personnel Department employees to a former Amtrak manager, Mr. Val Racich. Before his dismissal Mr. Racich had been Amtrak's Division Manager Human Resources in Chicago. Mr. Racich currently has litigation pending against Amtrak over his dismissal and therefore, in light of his antagonistic interest to the Corporation, it would be highly inappropriate to send blank company stationery to him.

On January 3, 1986, both Personnel Department employees were interviewed by the Division Manager Human Resources, in the presence of the Regional Administrator Human Resources. Both readily admitted that they knew what the packet contained and that Ms. Walton also knew its contents, was expecting the packet, and planned to deliver the packet to Mr. Racich.

After a careful review of all of the facts, the two Personnel Department employees were terminated, and Ms. Walton was formally removed from her position on January 7, 1986. A copy of the January 7, 1986 letter to her is enclosed. Clearly, company materials were being distributed without the approval or knowledge of responsible Amtrak officials to a non-Amtrak employee for highly questionable purposes. The involved parties' acknowledgement of their wrongdoing is clear and irrefutable. Given Ms. Walton's access to highly confidential company materials, as well as her prior discipline and performance record, management concluded that she could no longer be employed in a management position. However, she retained her union seniority through which she had the right to alternate employment at Amtrak. She has exercised that seniority and is now holding a position in the Finance Department.

I gave the Subcommittee my full assurance that I would personally ensure that Amtrak employees would suffer no retaliation because they appeared as witnesses before the Subcommittee, and I remain committed to that promise. The actions taken with Ms. Walton were in no way related to her appearance before your Subcommittee. However, I also stated, both in my testimony and in letters to Representative Yates and the Subcommittee, that no employee should enjoy immunity for future misconduct simply because he or she had testified; each should continue to be treated fairly, neither preferentially nor prejudicially. Our decision to remove Ms. Walton from her position was the result of her involvement in a very serious breach of company rules.

As you may know, Ms. Walton currently has complaints of discrimination filed against the company, and we are fully cooperating in the investigation of Ms. Walton's complaints with these external agencies. She also has filed a law suit in federal court in which the propriety of Amtrak's actions will be addressed with regard to her employment.

I hope this information assists in your understanding of Amtrak's position in this matter. If you have any further questions, please let me know.

Sincerely,

W Graham Claytor

W. Graham Claytor, Jr.
President

Enclosure

[illegible]

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois [illegible]

[illegible]

January 7, 1985

Ms. Jodie Walton
1327 Cove
Prospect Heights, Illinois 60070

Dear Ms. Walton:

This is in reference to our conversation on January 3, 1985, and letter that was sent to you on that same date, in which you were advised that you were placed on administrative leave without pay.

We have conducted a thorough investigation concerning your involvement in attempting to forward Amtrak company material to a non-Amtrak employee whom you knew to have interests adverse to this company. Your conduct in this matter violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct.

Because of your involvement, which demonstrated a serious lack of judgement, as well as a violation of Amtrak procedures and rules, we cannot continue to employ you in your current management position of trust and responsibility. In view of the several strong warnings given to you in the past, you certainly knew that further misconduct would not be tolerated. Therefore, you are hereby removed from your position of Labor Relations Supervisor, effective immediately.

Please refer to the attached Compensation and Benefits sheet for specific information.

Sincerely,

J. W. Carter, Jr.

J. W. Carter, Jr.
Regional Manager
Labor Relations

SIDNEY R. YATES
9TH DISTRICT, ILLINOIS

COMMITTEE
APPROPRIATIONS

CHAIRMAN, INTERIOR AND
RELATED AGENCIES

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE
2234 RAYBURN HOUSE OFFICE BUILDING
20515
(202) 225-2111

DISTRICT OFFICES
230 S. DEARBORN STREET
CHICAGO, IL 60604
(312) 353-4596

3100 RIDGE AVENUE
EVANSTON, IL 60204
(312) 328-2610

January 10, 1986

Mr. W. Graham Claytor, Jr.
President
Amtrak
400 N. Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

I have learned that Jodie Walton has been removed from her position of Labor Relations Supervisor.

I can only say as I did in my letter to you of October 3, 1984, that the reason for her firing is obvious and outrageous. In her dismissal letter, it states that a thorough investigation took place -- how, when, where, to whom did the investigators speak? Not to Ms. Walton. I request an explanation of Ms. Walton's firing and why I should believe that it had nothing to do with her involvement in the Congressional hearings on Amtrak and her previous hostile relationship with her former supervisor, Michael Hagan.

I think this is a serious and deplorable development, and I object to it in the strongest terms.

Very truly yours,

Sidney R. Yates

SIDNEY R. YATES
Member of Congress

cc: Congressman William Lehman
Congresswoman Cardiss Collins

[illegible] 400 North Capitol Street, NW, Washington, DC 20001

Amtrak

January 28, 1986

Honorable Sidney R. Yates
U. S. House of Representatives
2234 Rayburn House Office Building
Washington, DC 20515

Dear Representative Yates:

I am responding to your January 10 letter concerning Amtrak's decision to remove Ms. Jodie Walton from her position as Labor Relations Supervisor effective January 7, 1986.

I very much regret you have assumed that Amtrak's decision to dismiss Ms. Walton is in some way related to her appearance before the House Subcommittee on Government Activities and Transportation. I have given the Subcommittee my full assurance that I would personally ensure that Amtrak employees would suffer no retaliation because they appeared as witnesses before the Subcommittee; I remain committed to that promise. The actions taken with regard for Ms. Walton were in no way related to her appearance before that Subcommittee. However, I also stated, both in my testimony and in letters to you and the Subcommittee, that no employee should enjoy immunity for future misconduct simply because he or she had testified; each should continue to be treated fairly, neither preferentially nor prejudicially.

As you are aware, Ms. Walton has been subject to probation on several occasions in the past, both prior to and after her appearance before the Subcommittee, for failures to perform her assigned duties satisfactorily. I would like to provide you with the details surrounding the most recent incident in which she was involved which resulted in her dismissal.

During December 1985, a packet of company material addressed to Ms. Walton was intercepted by the Division Manager Human Resources, Chicago. The packet contained numerous pieces of Personnel Department stationery with notes from two Personnel Department employees to a former Amtrak manager, Mr. Val Racich, which the two employees allege was for the purpose of having Mr. Racich write back-dated reference letters. Before his dismissal Mr. Racich had been Amtrak's Division Manager Human Resources in Chicago. Mr. Racich currently has litigation pending against Amtrak over his dismissal and therefore, in light of his antagonistic interest to the Corporation, it would be highly inappropriate to send blank company stationery to him.

On January 3, 1986, both Personnel Department employees were interviewed by Division Manager Human Resources, in the presence of the Regional Administrator Human Resources. [redacted] ~~that they knew what the packet contained and that Ms. Walton knew its~~ contents, was expecting the packet, and planned to deliver the packet to Mr. Racich. Those employees held responsible management positions which require a high level of confidentiality and discretion.

Although Ms. Walton has apparently informed you that no one spoke to her about the allegations, this is simply untrue. Mr. Joe Carter, the current Manager Labor Relations in Chicago, interviewed Ms. Walton on January 3, 1986, in the presence of the Manager Internal Audit.

After a careful review of all of the facts the two Personnel Department employees were terminated, and Ms. Walton was formally removed from her position on January 7, 1986. A copy of the January 7, 1986 letter is enclosed. Clearly, company materials were being distributed without the approval or knowledge of responsible Amtrak officials to a non-Amtrak employee for highly questionable purposes. The involved parties' acknowledgement of their wrongdoing is clear and irrefutable. Given Ms. Walton's access to highly confidential company materials, as well as her prior discipline record, management concluded that she could no longer be employed in a responsible management position. However, she retained her union seniority through which she had the right to alternate employment at Amtrak.

I hope this information assists in your understanding of Amtrak's position in this matter. If you have any further questions, please let me know.

Sincerely,

W. Graham Claytor, Jr.

W. Graham Claytor, Jr.
President

Enclosure

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois 60606

Amtrak

Rec'd
1-4-86.

January 7, 1986

Ms. Jodie Walton
1327 Cove
Prospect Heights, Illinois 60070

Dear Ms. Walton:

This is in reference to our conversation on January 3, 1986, and letter that was sent to you on that same date, in which you were advised that you were placed on administrative leave without pay.

We have conducted a thorough investigation concerning your involvement in attempting to forward Amtrak company material to a non-Amtrak employee whom you knew to have interests adverse to this company. Your conduct in this matter violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct.

Because of your involvement, which demonstrated a serious lack of judgement, as well as a violation of Amtrak procedures and rules, we cannot continue to employ you in your current management position of trust and responsibility. In view of the several strong warnings given to you in the past, you certainly knew that further misconduct would not be tolerated. Therefore, you are hereby removed from your position of Labor Relations Supervisor, effective immediately.

Please refer to the attached Compensation and Benefits sheet for specific information.

Sincerely,

J. W. Carter, Jr.

J. W. Carter, Jr.
Regional Manager
Labor Relations

Attachment

SIDNEY R. YATES
9th District, Illinois

COMMITTEE
APPROPRIATIONS

Chairman, Interior and
Related Agencies

Congreſs of the United States
House of Representatives
Washington, D.C. 20515

[illegible]
20515
(202) 225-2111

District Offices
230 S. Dearborn Street
Chicago, Illinois 60604
(312) 353-4596

2100 Ridge Avenue
Evanston, Illinois 60204
(312) 328-2610

October 3, 1984

Mr. W. Graham Claytor, Jr.
President
Amtrak
400 N. Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

I have just been informed that Jodie Walton, one of the witnesses in the hearing before the House Subcommittee on Government Activities and Transportation chaired by Congresswoman Cardiss Collins, has been placed on probation by Michael Hagan.

The reason is obvious and outrageous. We received your assurances that none of the witnesses testifying would find their jobs placed in jeopardy because of testimony given to the Committee. This is a palpable breach of your promise to the Congress.

I urge you to correct this injustice as promptly as possible and to punish those responsible for it. I would appreciate receiving your reply.

Sincerely yours,

Sidney R. Yates

SIDNEY R. YATES
Member of Congress

CC: Congresswoman Cardiss Collins
Congressman William Lehman

Amtrak

W. GRAHAM CLAYTOR, JR
PRESIDENT

October 16, 1984

Honorable Sidney Yates
U. S. House of Representatives
2234 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Yates:

I am responding to your letter of October 3, 1984, concerning Ms. Jodie Walton. I am gravely concerned that you are characterizing Ms. Walton's continued probation as retaliatory without first inquiring of us the reasons for our actions.

We have worked closely with your staff to respond to previous inquiries concerning other constituents. We will be happy to do so with regard to Ms. Walton and to provide you, if you are interested, with a detailed description of Ms. Walton's failure over the past year to perform her job responsibilities satisfactorily. In fact, prior to the start of the investigation by the House Subcommittee on Government Activities and Transportation, Ms. Walton had been placed on probation for, among other reasons, her failure to report for work on several occasions and to attend scheduled meetings. During her probationary period, she missed another scheduled meeting and also failed to complete an important job assignment. All employees are held accountable to fulfill the requirements of their positions, and in this instance, Ms. Walton did not perform her job as required.

I gave the Subcommittee my full assurances that I will personally see to it that Amtrak employees suffer no retaliation because they appeared as witnesses at the hearing. My commitment to this promise remains complete. In this instance, I was made aware of the reasons for the personnel action prior to its initiation. I was satisfied that it was not based in any manner upon Ms. Walton's congressional testimony, and I specifically approved it. In my opinion, a decision based on Ms. Walton's performance during her prior probationary period would not have been in her interest, and by extending her probationary period she is being given another opportunity to show that she can perform effectively and satisfactorily. If this occurs, as I hope it will, she will be removed from probation and returned to the status of an employee in good standing. I have personally informed her of this.

Those who appeared as witnesses cannot expect that the company will overlook serious job deficiencies. All Amtrak employees, including those who happen to be called as witnesses before a congressional subcommittee, are required to fulfill the accountabilities of their positions and are subject to legitimate corrective actions, such as probation, when they fail to do so.

I feel sure that if you consider all the facts concerning Ms. Walton's probation, rather than merely considering her view of it, you will recognize that Amtrak has acted responsibly with regard to Ms. Walton and in no way has acted in retaliation for her participation in the Subcommittee hearing. The responsible officer and I will be pleased to discuss this matter in further detail with you if you so desire.

Sincerely,

W Graham Claytor

cc: Honorable Cardiss Collins
Honorable William Lehman

CARDISS COLLINS, ILL., CHAIRWOMAN
MAJOR R. OWENS, N.Y.
BARBARA BOXER, CALIF.
TOM LANTOS, CALIF.
GERALD KLECZKA, WIS.
ROBERT E. WISE JR., W. VA.

NINETY-EIGHTH CONGRESS

Congress of the United States
House of Representatives
GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, D.C. 20515

[illegible]
ALFRED A. (AL) McCANDLESS, CALIF.
DAN SCHAEFER, COLO.

(202) 225-7920

October 5, 1984

Mr. W. Graham Claytor, Jr.
President and Chairman
of the Board
National Railroad Passenger Corp.
400 N. Capitol Street N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

It has come to my attention that Jodie Walton, one of this subcommittee's witnesses at the September 13, 1984 hearing, has been placed on probation. The Amtrak official responsible was Michael Hagan.

As President of Amtrak you have repeatedly assured this subcommittee and your employees that no reprisals would result against any Amtrak employee who cooperated with or testified before this subcommittee. I can only assume that you communicated this order to your managers, including Mr. Hagan, who I am informed was present on September 13 when you last restated your promise. Mr. Hagan's unmistakable disregard of your orders requires a swift response from you.

I request that you investigate this matter immediately and report to me your findings within ten days. Please identify and indicate at what point in time each of his superiors, including you, became aware of this action and from what source each learned. In addition, please identify all officials who reviewed and approved of his decision before and after it was made.

This is not the most appropriate time, nor place to address the larger question of the employment status of Mr. Hagan and others. I would, however, like to make a few observations about Mr. Hagan.

Thus far, Mr. Hagan has distinguished himself as a key player in a very successful Machiavellian scheme to deprive Amtrak employees of their most fundamental rights as union members, citizens of America, and human beings. At this he has proven himself very capable.

I question your apparent decision to retain in the employ of this publicly-financed corporation a man whose incapacity as a labor relations professional is so thoroughly documented. The key position he occupies requires a person of moral integrity, strength, and fairness. His record in these regards is reprehensible. His arrogant abuse and non-use of authority and power has no doubt inflicted cruel pain and havoc on the lives of hundreds of Amtrak employee families. He has subverted a quasi-judicial process which the law requires to be fair and impartial. Mr. Hagan was paid with public dollars to prevent the Jim Browns, Darrell Bryans, Frank Fortiones and Don Staskas at Amtrak from imposing their arbitrary, capricious, and retribitive concepts of justice on Amtrak employees.

Mr. Hagan certainly knew the hearing process was rigged. Mr. Hagan clearly knew he was denying appeals that had merit. Mr. Hagan certainly knew he was extracting "leniency" confessions from innocent employees who were too hungry to say no. Mr. Hagan clearly understood and used the company's power to attack various unions. Mr. Hagan's professional capacity as a decisionmaker in a supposedly color-blind publicly financed railroad is without question woefully deficient.

It is essential that no more public resources be expended to compensate nor "retrain" managers of his caliber.

The subcommittee will continue to review your handling of Mr. Hagan and others whose perverse theories of power and justice have been brought to light. The September 13 hearing documented misconduct which I am beginning to infer from your response thus far, received approval and reward at the highest levels of your executive offices.

I sincerely hope this is not an accurate assessment.

In the coming months, I will inform you of follow-up hearings to review the Corporation's response to the evidence obtained from this subcommittee's continuing investigation and oversight. The subcommittee members are very interested in the Corporation's resolve to repudiate the misconduct of the past and those responsible for that misconduct.

Sincerely,

Cardiss Collins

CARDISS COLLINS
Chairwoman

CC:MGZ:eg
cc: Chairman William Lehman
Chairman James Florio
Congressman Sidney Yates

National Railroad Passenger Corporation 400 North Capitol Street, N.W., Washington, D.C. 20001 Telephone (202) 383-3000

Amtrak

June 1, 1984

Dear Amtrak Employee:

Representative Cardiss Collins, Chairperson of the House of Representatives Subcommittee on Government Activities and Transportation, is conducting an investigaton of various charges concerning management or employment problems in the Chicago area.

You are hereby requested to give Representative Collins your full cooperation and to respond to her inquiries with complete candor without any fear of adverse consequences.

W. Graham Claytor

W. Graham Claytor, Jr.
President

Amtrak

May 3, 1984

TO: Ms. Jodie Walton

Mr. Myron Zeitz, who serves as counsel to the Subcommittee on Government Activities and Transportation of the U.S. House of Representatives Government Operations Committee, is conducting an investigation of various charges concerning management or employment problems in the Chicago area.

You are hereby requested to give Mr. Zeitz your full cooperation and to respond to his inquiries with complete candor without any fear of adverse consequences.

Graham Claytor Jr

W. Graham Claytor, Jr.
President

AMTRAK'S MANAGEMENT PHILOSOPHY

Amtrak has a lot of stars in its management group at all levels; in fact, after working with them for almost two and a half years, I would rate them equal or superior to the best in the industry in their various assignments. That, of course, is very good, but it's not good enough. A pick-up team of all-stars would have little chance against a seasoned superbowl winner. Amtrak's future success, accordingly, depends on the ability of its management to run this company as a unified team.

What is a team? It is a group of people organized to pull together to reach a common objective; if they pull in different directions or devote a lot of energy to interdepartmental bickering, they get nowhere regardless of how good each one is individually. Our common objective is set out in goals established by Congress in our basic statute and is summarized in our Mission Statement.

When a team works together, it gets a multiplier effect called synergism – that is, the output of five people working together can be a lot more than five times their individual outputs.

Furthermore, it's not enough for this teamwork to be interdepartmental – it has to be vertical as well. That is where a manager's skill, or lack of it, comes into play.

What is a manager? In simplistic terms, a manager is someone who accomplishes things through and with other people.

Who are these other people? They are both the management supervisors who work for the manager, and the agreement-covered employees in the shops and offices and on the road who make the railroad run. Furthermore, since almost nine-tenths of Amtrak's people are agreement-covered employees, they are primarily the ones we must rely on to get the job done. Accordingly, how we lead, guide and motivate these employees is critically important.

How does a manager do this? He is not God, and his job is not to be a policeman trying to catch subordinates doing something wrong. He must rather be a coach and leader whose job is to guide and help his subordinates to do their jobs effectively. He must motivate his people so that they really want to do this.

Amtrak is a young company with few traditions of its own. Unfortunately, as a result, we have never had any real training, instruction or even a well-articulated policy to guide our managers and supervisors on how to accomplish this. To correct this deficiency, we are instituting an in-depth management development program for all levels of our management. These programs will involve not only our first line and intermediate field managers in all departments, but also our headquarters and top managers as well.

The following are some fundamental aspects of our management philosophy that will be discussed in depth in this program:

(1) The primary management tool with which to motivate people is not discipline and punishment. In some areas within Amtrak and elsewhere, this has appeared to be the main if not the only management tool used.

You as a manager must always remember that you are dealing with human beings, and unless they are helped and encouraged to want to do a good job, neither their nor your potential will be realized. If you make them proud to be members of your team, you will accomplish your goals; if your approach creates only fear of punishment and resulting resentment, you will surely fail.

This does not mean that goof-offs or violations of rules are not to be penalized; it does mean, however, that with all but the most serious offenses, this should be the last, not the first, resort.

(2) If reasonable efforts to counsel, persuade or train continue to be unsuccessful, the only remaining solution may be discipline, including discharge. In these cases, it must be applied in a fair and non-discriminatory way, and in full accord with the procedures called for in the Railway Labor Act and applicable labor agreements. This will in all cases be monitored and enforced impartially by our labor relations officers.

(3) Many people who are given their first job as a supervisor without prior direction or training think they have to be tough and rough in order to show who is the boss. A person who feels he has to do this is not qualified to be the boss, and this has to be made clear to him.

(4) Relations between the local union chairman and local management are important, but more frequently than not are mishandled by both sides. The main thing for a manager to remember is that he and the local chairman really have more in common than in controversy. While it takes two to have an agreement, it also takes two to have a fight. The local manager or supervisor should take the lead in trying to develop a satisfactory working relationship with the local chairman. Suggestions by the local chairman should be given careful and thoughtful consideration. If they cannot be accepted in whole or in part, the reasons for this should be explained. This does not mean that the local chairman is to be permitted to take over management's prerogatives, but it does mean that the manager must make a genuine effort to find a way to meet or alleviate his good faith concerns. Our Labor-Management Productivity Council is making good progress here and should be helpful to both sides.

(5) Promotions must be made strictly on the merits. The company cannot continue to exist if promotions are made on the basis of favoritism, nepotism or anything but qualification for the assignment. Furthermore, we have to be careful to avoid even the appearance of promotions based on anything other than the merits.

(6) It must always be remembered that Amtrak is and must be an Equal Opportunity Employer, with a strong Affirmative Action Program. What does this mean?

(a) It does not mean that we promote a less qualified minority just because he or she is a minority.

(b) At the same time, it is a manager's job – not just that of the Personnel Department or an EEO officer – to do what is necessary to develop minority members so that they are qualified for promotion. Personnel and EEO people are available to assist – but it is the manager's responsibility to do the job. If the manager doesn't do it, Personnel may have to – and will – step in, but that should not be necessary.

(7) Managers must maintain good communications with their subordinates and let them know what is expected of them at all times. They must be particularly careful to counsel or commend them when appropriate. In addition, performance evaluations of all management people are very important and must be used to call the attention of managers to their strengths and weaknesses, not just to evaluate them on end results. I have seen very high evaluations of managers whose performance in handling their people, in maintaining high morale, in promotions and in discipline has been miserable – without any real evaluation of these areas. While results are what count, how these results are obtained must also be carefully considered. In the future, evaluations of these factors will be much more closely examined, both by higher management and by Personnel officers.

(8) Overriding all of the above is the requirement that we operate our trains safely. Our operating rules are designed to assure this, and any violation of these rules calls for swift and effective action, including in most cases removal of the officer or employee from service pending investigation, and appropriate discipline if the violation is proved. Furthermore, nothing in this policy is to be interpreted as derogating in any way from the authority or responsibility of the manager. All of our managers, including those at the first line or other lower levels, must understand and act in accordance with our management policies, and if they do, they will be solidly supported in the exercise of their authority by higher management.

Conclusion

The keynote of our company's management philosophy has to be teamwork – and real leadership has to be brought to bear to make this effective. We have to have all of our managers committed to this program and in a position to explain it and convince their juniors of its importance.

We will be implementing this with our management development program as well as at regional meetings. We can only be successful with the full understanding and cooperation of the entire management hierarchy. When we do it right, all levels at Amtrak will be proud to be part of a winning team. We do not intend to stop until we accomplish this goal.

W. Graham Claytor Jr

W. Graham Claytor, Jr.

November 1984

MISSION STATEMENT

Amtrak is an operating railroad corporation, the controlling stock of which is owned by the United States Government through the U. S. Department of Transportation. Our business is providing rail passenger transportation in the major intercity travel markets of the United States. Our most important assets are our many fine employees. As a professional transportation company we place paramount emphasis on improving the quality of our service and the efficiency of our total enterprise. We are proud to be an important member of the growing travel industry.

Our mission is to offer ever-increasing value to our customers while at the same time achieving three basic financial objectives:

To reduce year by year our constant-dollar requirement for federal operating support.

To improve year by year the ratio of our overall revenues to operating costs.

To manage our routes in such a way that route revenues, in the aggregate, cover a continually increasing portion of route avoidable costs.

To achieve these goals, Amtrak must continue to develop markets, improve service quality, and increase productivity.

Market development means successful product development, advertising, distribution, pricing and sales. It means continued improvement in the distinctiveness and attractiveness of our product. To the extent our resources permit, we will continue to improve the condition of our rolling stock, our right-of-way, and our stations, increase service where profitable opportunities exist, and develop our on-board amenities to match the demands of the various markets we serve. All these efforts must be targeted with great care to ensure that we deploy our scarce resources in ways that are most profitable.

Service quality means competent, consistent, courteous service: schedules that are reliable, equipment and facilities that are clean and in good repair, customer contact that is helpful, caring, and friendly. Amtrak has made great strides in this area over the past few years, but no one doubts that we should do much better. We can be satisfied when every employee truly believes that the customer comes first, and consistently acts on that belief.

Productivity is how much we produce for what we consume. Our mission and objectives require that we constantly strive to do more with less. To put it another way, we need to do things better, quicker and more cheaply. The challenge of productivity improvement is to be innovative and smart, to figure out how to move from today's best effort to tomorrow's better effort. Sometimes it takes investment, sometimes just different ways of doing things. Like service quality, it doesn't happen because someone orders it to happen; it happens when people challenge themselves and each other to come up with better ideas.

It is simple to state Amtrak's business objectives. To achieve them is an enormous challenge. The only path to success is through teamwork: cooperative efforts toward common purposes, management that is demanding but also fair, employees in all positions who are dedicated to common objectives but also respectful of one another.

The challenge of management is to inspire in others the desire to do the job well. There is no all-purpose formula that works; successful leadership takes many shapes. At a minimum, however, it should be every Amtrak manager's policy:

To treat employees fairly, openly, and honestly in all matters and to deal in good faith with employee representatives;

To inform employees about the Corporation and its affairs as fully and promptly as practicable, and to give full and fair consideration to employee suggestions for improving productivity, passenger service, and working conditions;

To ensure that a well-qualified person is in each job in the Corporation and to afford employees the opportunity to advance on the basis of their individual abilities, skills, knowledge and performance without favoritism or regard to personal relationships;

To treat employees in all matters without discrimination on the basis of race, color, national origin, sex, age, religion, or handicap, and to maintain dedication to the principles of Affirmative Action;

To expect employees to work productively, living up to the obligations of their assignments, cooperating with their fellow employees, protecting the Corporation's property and representing the Corporation well;

To comply fully with laws and contractual provisions of labor agreements governing collective bargaining, working conditions, and employment;

To manage in such a way that causes for grievances will be minimized, and to give careful and thoughtful consideration to suggestions made or concerns expressed by employees and their representatives;

To correct inadequate performance in a thoughtful and appropriate manner, and to be fair and impartial in the administration of discipline.

Amtrak's business is challenging, but our business objectives are very simple. We are a team working hard to improve our service and increase our efficiency. To the extent that we are successful in this effort, our future is secure.

November 1984

NATIONAL RAILROAD PASSENGER CORPORATION

INTEROFFICE MEMO

DATE: September 21, 1984

TO: J. WALTON

FROM: M. J. HAGAN

SUBJECT: PROBATION

As you know, you were placed on probation for sixty days on February 29, 1984. Because of your absence from work due to your medical leave of absence, the period in which to review your work was correspondingly extended to September 20, 1984.

As indicated in my memorandum to you of February 29, I advised you that you were expected fully to fulfill the duties and obligations of your position. Your work performance during your probationary period indicates you have not done so.

On August 1, 1984, I assigned you the responsibility of responding to forty identical BRAC time claims. Labor Relations' response was due no later than September 3, 1934. You took a week of vacation from August 27 to September 4, 1984. During your vacation, I found to my surprise that you had not prepared a response to the claims for my review before you left for vacation. To avoid paying the claims by failing to respond within the time limits of the agreement, I prepared the responses and submitted them to the union. Had I not done so, the Corporation would have been subjected to monetary liability of approximately $3,600.00 and this Department would have been appropriately criticized for our negligence in failing to respond in a timely fashion. This dereliction of responsibility by you is extremely serious and justifies extending your probation.

Moreover, on September 11, 1984, you failed to attend the scheduled monthly safety meeting in which you represent this Department. As you know, your failure to attend meetings was one of the reasons you were initially placed on probation and you were advised to attend scheduled meetings. You failed to advise me of your inability to attend this meeting or to request my permission to do so.

Accordingly, I am extending your probation for another sixty days. Please be advised that your performance must be improved during this period or you may be subject to further disciplinary action, including dismissal.

As I indicated in my February 29 memorandum to you, I hope that your performance will improve during your probationary period. I remain willing to meet with you and give you any assistance that you may need.

Amtrak®

Amtrak

October 9, 1984

Ms. Jodie Walton

Dear Ms. Walton:

Ten years of service by an individual to Amtrak is a considerable period of time to dedicate to the goals and objectives of an organization.

I would like to take this opportunity to congratulate you on reaching your ten year plateau. Regrettably, this congratulatory letter and service pin were not delivered on your July 15th anniversary date because you were absent on leave.

Our Ten Year Service Pin, which is being given to you, signifies an important milestone in your career and I hope you wear it with pride.

I hope you will continue to support the accomplishments of rail passenger service, and I extend my congratulations to you in joining the other Ten Year Service Pin recipients who have worked for the continued success of our Corporation.

Sincerely,

W Graham Claytor Jr

W. Graham Claytor, Jr.
President

State of Illinois)
)
County of Cook)

AFFADAVIT

I, Linda Watson, state that the following is true and correct to the best of my knowledge:

I was employed with AMTRAK from 11-12-73 until 1-7-86.

Sometime in mid December, 1985, I had a phone conversation with Jodie Walton, regarding the updating of my resume and a letter of reference, that was to be done by a former employee on his home computer.

In that envelope, addressed to Jodie Walton, Labor Relations, sealed and marked "Personal & Confidential", I enclosed approximately 17 sheets of Amtrak letterhead, along with a note to this former employee, requesting the same.

Jodie Walton's knowledge of the envelope contents was to be a resume.

I did not enclose the resume as we discussed.

I then advised Cheryl Kauzlarich-Helsel that Val Racich was going to do this for me. She then asked if he would do the same for her. I handed the envelope to her and she mailed it sometime that same day.

Further affiant sayeth nought.

Linda Watson
Linda Watson

Subscribed and sworn.
Jacqueline S. Peacock
This 13th Day of January, 1986

State of Illinois)
)
)
County of Cook)

AFFADAVIT

I, Cheryl Kauzlarich Helsel, state that the following is true and correct to the best of my knowledge:

1. I was an employee of Amtrak from 8-11-74 until 1-7-86.

2. I was employed as a personnel clerk.

3. Sometime during mid December, 1985, I placed an envelope in the Amtrak interoffice mail addressed to Jodi Walton, and the same was marked personal and confidential.

4. The envelope had been handed to me and it was at that time in an addressed and sealed condition. It was given to me by Linda Watson, She advised me that Val Racich was going to write her a reference letter and update her resume.

5. I unsealed the envelope and found it to contain Amtrak stationary and a note from Linda Watson to Val.

I put in a note asking he do the same for me, resealed the envelope, and mailed it.

6. I never spoke to Jodi Walton about the envelope or what it contained.

Further affiant sayeth nought.

Cheryl Kauzlarich Helsel
Cheryl Kauzlarich Helsel

Subscribed/and sworn.
This 13th day of January 1986.

January 10, 1986

Mr. Graham Claytor
President, Amtrak
400 N. Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

It is almost impossible for me to describe how my recent termination from Amtrak has affected me, as well as the others involved in this incident, mentally, physically, emotionally, and created a severe financial hardship to our families.

In that on January 3, 1986, I was placed on Administrative Leave without pay, along with Cheryl Kauzlarich-Helsel and Jodie Walton, pending the results of an investigation of an envelope that was sent Intra-Office mail, Personal & Confidential, to Jodie Walton. On January 7, 1986, I, along with Ms. Kauzlarich-Helsel and Ms. Walton, were terminated from Amtrak, based on the results of that investigation. After devoting myself to my position for the last 13 years, I find it incredible that such a harsh and unusual punishment has resulted from such an unfair and arbitrary investigation, which was pre-judged. In light of the many investigations being conducted, both internally and externally, much more serious offenses have occurred, with no repercussions or punishment, and in fact, have often resulted in promotions. The most distressing factor in this thorough investigation, which was conducted more like a witch-hunt, is that Ms. Walton's knowledge of the contents of this envelope was to have been a resume, which a former employee was to update on his home computer. With the current economy and Amtrak's possible elimination of government funds, I felt it was necessary to get these things in order. However, due to the work flow in the office and preparation for vacation, this resume was not enclosed. The contents of the envelope contained approximately 17 sheets of Amtrak letterhead, along with a note from myself, to a former employee, Val Racich, of whom I had worked for over 10 years, requesting a letter of recommendation to be backdated during his tenure. Ms. Kauzlarich-Helsel attached the same.

It saddens me that our own Human Resource Department has no remorse for the treatment of their own employees after so many years of loyal and devoted service. As indicated in your service letters, "Nothing is more valuable to this Corporation than employee loyality, dedication, and experience." I have always taken great pride in my job and tried to achieve a climate of trust, cooperation, and mutual confidence, as well as being helpful, friendly, and caring with those I have come into contact. If you were to review my personnel file, it will show that I am a Team Player. My performance during my service with Amtrak, fulfilled all major requirements and generated results, and that I consistently generated results above those expected of me. I have never subjected our department or the Company to any deliberate critizism or embarrassment, in spite of several past incidents of extreme intimidation and harrassment by my own department heads.

I am asking you to put a halt to the deliberate and deceiving lies in which Hank Engel, Human Resource Manager-West, has indicated to several managers, that Tom Blum, Human Resource Manager-West, told him, that I was personally contacted by Val Racich and asked to get him a personnel file, and that this file was a part of the envelope contents. They have also indicated that Ms. Kauzlarich-Helsel's note was quite lengthly and had many derrogatory and detrimental things against Amtrak. They have also indicated that Company information has leaked to this former employee and accusations have been made that this must be the source. Contrary to popular belief, Mr. Claytor, I assure you, that my integrity is much more important and have had no involvement what so ever in these accusations.

Mr. Graham Claytor
Page 2
January 10, 1986

It is even more distressing that after all the thousands of dollars that have been spent on management training and development programs, that these principles are not being carried out at the manager level and above, and that managers and above are allowed to play GOD and dictate policies that they fail to follow themselves.

Mr. Claytor, if I felt that I was deliberately violating any Company Rules, do you really think that I would have taken a chance to jepordize my job, along with the others, by sending this through our own mail service?

I have no other alternative to believe that I, along with the others, have been set-up and used as a sacrificial lamb in this matter.

Attached is a copy of your Mission Statement, which is completely contradictory to the facts presented in this letter.

I await your reply.

Sincerely,

Linda Watson

Linda Watson
Former Employee
Chicago Human Resource Department

cc: Myron Zeits
Human Rights

National Railroad Passenger Corporation, 400 North Capitol Street, NW, Washington, DC 20001

Amtrak

February 11, 1986

Ms. Linda Watson
3409 Schulze Lane
Steger, IL 60475

Dear Ms. Watson:

I have reviewed your letters of January 10 and January 13, 1986, in which you suggested that your and two other employees' recent terminations were in conflict with Amtrak's Mission Statement and that misrepresentations about your termination have been spread by officials within your department.

With regard to your termination, that action was taken only after your department had carefully considered your conduct and you had an opportunity to explain your actions. The Personnel Department concluded that your involvement in an attempt to provide company materials to a non-Amtrak employee, whose interests were known to be adverse to the company's, not only violated Amtrak's own business standards and procedures but also our Rules of Conduct. Your actions also demonstrated a serious lack of judgment. Accordingly, the department decided that it could no longer continue to employ you in a position of trust and responsibility. It is also my understanding that you had previously been warned in the past that acts such as this would not be tolerated by the Corporation. With regard to your comments concerning the terminations of Ms. Kauzlarich-Helsel and Ms. Walton, it would be inappropriate to comment on personnel actions taken with regard to other employees. I would note, however, that your statement in your letter of January 10, 1986 to me that Ms. Walton was unaware of the contents of the envelope forwarded by you to her is inconsistent with statements you made to Mr. Blum on January 3, 1986 during his interview with you concerning this matter.

With regard to your statement that Messrs. Engel and Blum made misrepresentations concerning your termination, I can assure you that both men deny ever telling any persons that the envelope in question contained a personnel file or that you were terminated because you had "leaked" confidential information to Mr. Racich. Apparently, whoever made such statements to you was misinformed. Circumstances surrounding the termination of employees are confidential and are generally not to be discussed except between persons who legitimately have a need to be aware of them. Unfortunately, rumors and misstatements made by persons who do not have knowledge of the true facts do occur and, regrettably, that appears to have happened with regard to your

termination. Although I have no control over such rumors, I do not believe that the management officials involved in your termination have made such misrepresentations or have failed to maintain confidentiality concerning the circumstances of your termination.

While I can appreciate that you do not agree with the decision to terminate your employment, nonetheless it was a decision made by your department after thoughtfully considering your serious lack of judgment and misconduct in sending unauthorized Amtrak materials to Mr. Racich. Accordingly, based on all the information I have obtained, I cannot disagree with the department's decision to terminate you from your position.

Thank you for bringing your concerns to my attention.

Sincerely,

W. Graham Claytor

W. Graham Claytor, Jr.
President

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois 60606

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
#P-456-073-973

Amtrak

February 11, 1986

Ms. Linda Watson
3409 Schultz Lane
Steger, IL 60475

Dear Ms. Watson:

I am in receipt of your letter dated January 10, 1986.

You have requested answers to many questions throughout your letter, so I will attempt to answer them in the order in which they were presented.

You asked for clarification concerning the date your Administrative Leave was effective. Your Administrative Leave without pay was effective January 3, 1986. All benefits and pay ceased on midnight of January 3, 1986. This information was relayed to you verbally, in a telephone conversation with me, at approximately 3:30 p.m. on January 3, 1986.

With regard to your inquiry as to why you were placed on Administrative Leave without pay, it is Amtrak's policy that all management employees who are placed on Administrative Leave pending the results of an investigation into matters concerning policy violations do not remain in a pay status. In our telephone conversation of January 3, 1986, you asked me about a specific individual, who you thought had been paid while he was on Administrative Leave. In this case your understanding was incorrect, and the individual in question was not paid and did not receive benefits during his Administrative Leave.

You further asked what specific practices and procedures I referred to in your termination letter. In my January 7, 1986, letter to you I stated that, "your conduct violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct." I was referring to Amtrak's Procedures Manual PA-16 (Termination Policy), and Amtrak's Rules of Conduct, both of which you were familiar.

(Continued)

Your next two questions were, "You state that I used "lack of judgment." In what way? You state that I was "dishonest". What was my dishonest act?" By sending Amtrak Personnel Letterhead stationery to Val Racich, a former employee known to have interests adverse to this company, you did not use good judgment. You were dishonest by asking Mr. Racich, who is no longer your supervisor, or an employee of Amtrak, to write you a reference letter on Amtrak Personnel Department letterhead stationery.

You then asked me to clarify to what past incidents I was referring. The past incidents I was referring to were the previous investigations concerning repairs to your private auto by Amtrak employees on Amtrak property, the Officer Hrubec investigation, the missing Onboard Service test investigation, and the Steno test investigation, all investigations in which you were involved. On all of these incidents you were counseled by either me or Mr. Engel, concerning credibility and confidentiality within our department. I had also talked to you and all members of my staff, in various staff meetings, concerning adherence to policy and procedures, credibility and confidentiality.

You also inquired as to whether you were discharged for a past incident or sending intra-office mail to J. Walton. You were terminated from the employment of Amtrak for your unauthorized attempt to furnish Amtrak Personnel Department letterhead stationery to an ex-employee of Amtrak, which you admitted to me. In light of your past counselings, you were knowledgeable that misconduct of this nature would not be ignored or tolerated.

With regard to the return of your personal belongings in the office, I personally made the decision to send these items to your home and I collected them from your office and packed them. Contrary to your statement, other staff members did not perform these tasks. The decision to send your personal items rather than allow you to collect them was done to alleviate any awkwardness that might have surfaced by your appearance. Considering the circumstances, I still feel that this was the best decision.

Your possessions were sent to your home, via bonded courier, on January 15, 1986. On January 16, 1986, your Service Letter was remailed to your home due to an administrative error made on the previous letter of January 13, 1986.

(Continued)

With regard to outplacement services for you, the decision is that there are non available for you.

You also stated in your letter that you did not feel that the investigation that was conducted was fair, open and honest. The investigation that was done included our discussion in your office on January 3, 1986 at 9:30 a.m. At that time, you were given the opportunity to discuss this matter with me, and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with facts concerning the incident. You admitted your actions to me, and I had no choice but to remove you from your position.

With regard to your request for various documents, a copy of your entire personnel file is enclosed. This file includes data on salary, promotions, and performance evaluations. There are no working files with regard to you other than your personnel file. With regard to documents concerning the investigation leading to your termination, all investigative records are the sole property of Amtrak and corporate policy prohibits their disclosure to you.

Sincerely,

Frank T. Blum
Division Manager
Human Resources

Enclsoure

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois 60606

CERTIFIED-RETURN RECEIPT REQUESTED
#P-456-073-972

Amtrak

February 11, 1986

Ms. Cheryl Kauzlarich-Helsel
345 Nokomis
Park Forest, Illinois 60466

Dear Ms. Kauzlarich-Helsel:

I am in receipt of your letter dated January 11, 1986.

You have requested answers to many questions throughout your letter, so I will attempt to answer them in the order in which they were presented.

You asked for clarification concerning the date your Administrative Leave was effective. Your Administrative Leave without pay was effective January 3, 1986. All benefits and pay ceased on midnight of January 3, 1986. This information was relayed to you verbally, in a telephone conversation with me, at approximately 3:30 p.m. on January 3, 1986.

You also inquired as to the specific Rules of Conduct to which I had referred. I was referring to Amtrak's Rules of Conduct, of which you were a recipient, specifically, Rule F, paragraph 3; Rule K; and Rule N.

You wanted to know in what way you showed lack of judment and dishonesty. By sending Amtrak Personnel letterhead stationery to Val Racich, a former employee known to have interests adverse to this company, you clearly did not use good judgment. You were dishonest by asking Mr. Racich, who is no longer your supervisor, or an employee of Amtrak, to write you a reference letter on Amtrak Personnel Department letterhead stationery, as well as misappropriating company materials.

You further asked what specific practices and procedures I referred to in your termination letter. In my January 7, 1986, letter to you I stated that, "your conduct violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct." I was referring to Amtrak's Procedures Manual PA-16 (Termination Policy), and Amtrak's Rules of Conduct, both with which you were familiar.

You then asked me to please clarify to what past incidents I was referring. The past incidents were the previous investigations concerning Officer Hrubec in which you were involved. Also, on several occasions I had talked to you and all members of my staff, in various staff meetings, in various staff meetings, concerning adherence to policy and procedures, credibility and confidentiality.

You also inquired as to whether you were discharged for a past incident or for sending intra-office mail to J. Walton. You were terminated from the employment of Amtrak for your unauthorized attempt to furnish Amtrak Personnel Department letterhead stationery to an ex-employee of Amtrak, which you admitted to me. In light of your past counselings, you were knowledgeable that misconduct of this nature would not be ignored or tolerated.

With regard to the return of your personal belongings in the office, I personally made the decision to send these items to your home. I collected them from your office and packed them. Your possessions were sent to your home, via bonded courier, on January 15, 1986.

You also stated in your letter that you did not feel that the investigation that was conducted was fair, open and honest. The investigation that was done included our telephone discussion on January 3, 1986 at approximately 9:45 a.m. At that time, you were given the opportunity to discuss this matter with me, and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with facts concerning the incident. You admitted your actions to me, and I had no choice but to remove you from your position.

With regard to your request for various documents, a copy of your entire personnel file is enclosed. This file includes data on salary, promotions, and performance evaluations. There were no working files with regard to you other than your personnel file. With regard to documents concerning the investigation leading to your termination, all investigative records, including those of other employees, are the sole property of Amtrak and corporate policy prohibits their disclosure to you.

Sincerely,

Frank T. Blum
Division Manager
Human Resources

Enclosure

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS FOR 1985

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS

WILLIAM LEHMAN, Florida, *Chairman*

MARTIN OLAV SABO, Minnesota	LAWRENCE COUGHLIN, Pennsylvania
WILLIAM H. GRAY III, Pennsylvania	SILVIO O. CONTE, Massachusetts
WILLIAM R. RATCHFORD, Connecticut	JACK EDWARDS, Alabama
BOB CARR, Michigan	CARL D. PURSELL, Michigan
ROBERT J. MRAZEK, New York	

THOMAS J. KINGFIELD and GREGORY R. DAHLBERG, *Subcommittee Staff*

PART 5

	Page
DEPARTMENT OF TRANSPORTATION:	
Federal Railroad Administration	445
Grants to Amtrak	705
RELATED AGENCIES:	
Interstate Commerce Commission	1
United States Railway Association	323

Printed for the use of the Committee on Appropriations the next layer of supervisors who rode from the point of departure to the point of arrival?

Mr. CLAYTOR. Well, in effect, we have relieved them of responsibility for on-board services because they work for the railroad anyway. See, the conductor is still the most important man on the train.

Mr. LEHMAN. He still has enough to do?

Mr. CLAYTOR. Oh, he has more than enough to do, and he is in charge of everything. In fact, on anything at all, he can tell the train chief. He is superior to the train chief. As a practical matter, they work together, and most of our conductors, railroad conductors, are pleased that they now have a specialized man there to take care of these nagging problems if a passenger complains that the guy was rude to me or he did not make my bed when I asked him, and that sort of thing. That is now in the hands of somebody who really knows how to handle it.

Mr. LEHMAN. My problem was I thought you were just adding another layer to take care of a problem, and the cause of the problem was still on your payroll.

Mr. CLAYTOR. No.

Mr. LEHMAN. Okay. At this time I would like to yield to the gentleman from Illinois, Mr. Yates.

DISMISSAL OF AMTRAK EMPLOYEE

Mr. YATES. Thank you, Mr. Chairman.

I appreciate your courtesy for the opportunity of testifying here today, and I appreciate, too, Mr. Chairman, your cooperation and intervention in the case that I am about to cite when I asked for your help.

I want to bring to the attention of the Committee the case of my constituent, whose name is Barry Grossman. He wrote me a letter, and when I first looked into the case, I thought, well, I would do what I could for my constituent, as any member of Congress does when he receives a letter from a constituent when he said he had been wronged.

He said he had been dismissed unjustly by Amtrak, and that in itself aroused my interest, but not to a great extent, but as we do, we look for the best way of dealing with problems of our constituents, and of course, Mr. Lehman holds a very important position in the Congress as Chairman of this Appropriations Subcommittee, and I asked for his help.

He was kind enough to get in touch with what I thought would be one of the usual officials of Amtrak, but he got in touch with the top. He went right to the top, to Mr. Claytor, and Mr. Claytor was kind enough to call me and tell me that there was not anything that he could do, that it was in the course of appellate hearings from the dismissal, and he could not interfere in the hearings.

And I must say that I looked around for ways to help my constituent and went into the matter more thoroughly, and literally I was shocked, really shocked by what I discovered.

My constituent had told me that he had been fired because of the fact that he was Jewish. Now, this is a very important accusation. I am very much aware of the impact of this, and I was going to be very, very careful about it, and I have concluded that I am not going to raise that issue because I do not think it has to be raised.

The injustice of what was done to my constituent is so palpable and obvious that there is no need to go into any other charge, except to look. The only thing that one need do is to look at the record of the case which presumably justified his dismissal.

REVIEW BOARD HEARING

This is the transcript I hold in my hand. You can see how thick it is. I have read it. I have read every word of it, and you can see I have dog-eared the pages of the places where the examining officer went awry.

Ron Glaske

My constituent was fired. The examining officer is the one who should have been fired because he was so grossly unfair, and it is obvious just from reading the record. The hearing was obviously rigged. At the risk of sounding flippant, and I do not mean to be, my constituent was railroaded through the dismissal.

The examining officer was obviously told to fire my constituent, to find against him, to do everything necessary to kick him out, and that is what he did.

It is reprehensible. It is an outrageous hearing. Mr. Claytor, I know that the president of the railroad has got tremendous problems, so many problems that it is understandable that he does not have the time to look into the individual problems of one of his employees, but if I were the head of the railroad and this was called to my attention, I would lose no time in reading that transcript, every word. You can see the outrageous manner in which this employee was treated.

Now, I am so concerned about this that I proposed to ask the Chairman of our full Committee to have the Investigative Committee of the Appropriations Committee itself look into the employee relationships of Amtrak.

DENIAL OF APPEAL

Subsequent to the dismissal, the Corporate Director of Labor Relations of the railroad, whose name is Mr. C. B. Thomas, was asked to review the record on the grounds that it was an unjust dismissal by the Chairman of the Amtrak Service Workers Council, and he replied in a letter dated February 17th, 1984, in which he said, and I will offer the letter for the record, Mr. Chairman, "There is no evidence in the record that any action of the carrier was an abuse of the discretion vested in it. The record clearly shows the claimant's right to a fair and impartial investigation were not violated." I think it is obvious he has not read the record. The voluminous transcript in this case contains numerous procedural objections, none of which have merit. The claimant's request for additional witnesses—if you read that, you will see he wanted witnesses to testify as to his side of the story. That request was denied by the Hearing Officer, as it was well established the persons named were not present at the time of the incident. That is what the Hearing Officer said.

HEARI ROCEEDINGS

The investigation was recessed to obtain the testimony of Train Attendant May who was only able to confirm that an altercation had occurred between the claimant and Trainman Baker.

Incidentally, Train Attendant May did not know the claimant, and he did not know Trainman Baker, and he said he would not recognize them if he saw them.

When the hearing was reconvened, claimant objected to proceeding with Mr. Monroe rather than Mr. Davis, who was present to act as his representative. Well, as it happened, Mr. Davis had an emergency call that required him to leave the hearing, and the defendant's request for a postponement was turned down.

Neither claimant nor the organization had requested a postponement in advance. The witness for whom the recess had been called was present. The Hearing Officer properly proceeded to question the witness. Despite numerous warnings the claimant continued to disrupt the hearing, because he was making objections, and was excused from the room. No new information was developed after that point.

Substantial evidence, continues Mr. Thomas, was produced to support the carrier's finding of guilt. Even his own testimony on transcript page 127 shows the claimant did not deny outright that he had called Mr. Baker names. He only stated that he could not recall.

Well, there is another page subsequent in the hearing where the claimant says that he does not use profane language. Here is what he said.

"Did you call him that name?"

"Not that I recall. In fact, I would state at this time I probably did not because it's not my habit to use such language."

Mr. Thomas makes no reference to that page.

HEARING DEFICIENCIES

Based on the circumstances in this case and also in consideration of the claimant's extensive past discipline record—and there is no question about the fact that he had violations of company rules before, but in each case of the violation, he had been punished, and he accepted the punishment, but in this case he was dismissed for having violated Rules I, J and Y because he was argumentative and had used profanity toward D. E. Baker in the presence of passengers.

Nowhere in the record is it indicated that the profanity was used in the presence of passengers. They could not come forward with any passengers. The trainman against whom the profanity was alleged to have been used indicated that he did not know. He said there were some passengers down in the aisles. He did not know that they had heard it, whether they had heard it or not.

Now, it is obvious to me that this is just the most palpable miscarriage of justice that I think that I must call it to the attention of Mr. Claytor.

APPEAL PROCESS

Mr. Claytor. Mr. Yates, I called your office about this this morning.

Mr. Yates. Well, I had a hearing, Mr. Claytor.

Mr. Claytor. I see. Well, let me tell you, these proceedings—the reasons I told you I could not interfere— these proceedings are both statutory in accordance with a labor agreement. As a practical matter, until the proceeding is finished—I have been through this for 20 years in the railroad business—the President must never interfere. Let the proceeding be finished before anything at all is done.

When it is finished, the applicant, if he is dissatisfied, goes to a neutral board to do this.

REVIEW OF HEARING TRANSCRIPT

When I heard about some of the things you have mentioned, I said after the hearing was concluded, I called in my Vice President of Labor Relations, a very experienced and responsible officer, and said, "Look, I want you to take that transcript and read it yourself from end to end, and if you find that this has not been conducted properly, we will do something about it."

He read it yesterday. He came in this morning and said it is the most outrageous hearing he has ever seen. We agree with everything you say. Mr. Grossman has been restored to duty. The proceedings have been dropped, and I am very happy that this question has been raised because this has called to my attention a bad situation.

LABOR RELATIONS PROBLEM IN CHICAGO

We have had a problem here. Every railroad has, but this is not an area of Amtrak I have gotten into and I am now going to do just that. Your hearing officers have got to be trained. Amtrak has a training program for hearing officers, but there have been some other cases that are not as bad as this that I have heard about. The training is obviously inadequate.

We are right now putting a whole new system in effect for screening the hearing officer, screening the whole operation and turning it around. Chicago is a particularly bad place. We have had management problems there. We changed our General Manager in Chicago a short time ago. We are in the process of reorganizing that whole place, and so we have a management problem. We probable have some others they have not found out about, too, but this is serious, but it is being taken care of.

HEARING DEFICIENCIES

And I appreciate your bringing it to my attention because we are doing something about it. So far as Mr. Grossman is concerned, he is back at work, and this is wiped out, and I am going to see to it that—I have not looked at this myself, but I take my labor relations man's view, which is just about what you have said, that this is plainly improper, done wrong. Everything the hearing officer did was wrong, and he obviously is totally unqualified to do this sort of thing. He is not going to do it again, and I am going to look intc it a little bit more as to what went on in the particular case in the earlier stages. I can do that now.

But I wanted you to understand that at the time this is going on, the hearing is going on, I would never interfere until it is finished. I just cannot do that. You open up a bag of worms that is almost unbelievable if you interfere at that stage.

Mr. YATES. Well, I can appreciate that, Mr. Claytor. I would hope though that even though you cannot interfere, as you say, that if, however, circumstances in a particular case that is called to your attention warrants your taking a look at it, you do as you did in this case.

Mr. CLAYTOR. Well, we did. We will always do that.

Mr. YATES. That is right. You do as you did in this case and take a look to see whether what you did was correct.

Mr. CLAYTOR. We always do that.

REVIEW OF AMTRAK LABOR RELATIONS

Mr. YATES. All right. I had intended, Mr. Claytor, and I will tell you this frankly, I had intended to ask for this investigation of employee relationships. Perhaps it still should be done, but I think you ought to be given the opportunity on the basis of your statement this morning to review the situation and try to correct it.

Mr. CLAYTOR. Oh, I think this is very important, and we are doing that.

Mr. YATES. It is very important, and I hope you will stay in touch with Chairman Lehman, and with me.

Mr. CLAYTOR. Oh, sure, yes.

Mr. YATES. And let us know the progress of it so we can discuss it with you, and at a later date, if we feel that it ought to be reviewed in some way by Congress, I still want to retain that option to do that.

Mr. CLAYTOR. Right, that is fine, sir.

This is not unique to Amtrak. This is a railroad industry problem. I had similar problems at Southern. We reorganized our Labor Relations Department. We put in an extremely complex and expensive, but worthwhile, training program for everyone who conducts investigations, and I think we fixed it there. Well I am just going to have to do the same thing here.

But you will find this is not unique to Amtrak. If attention is not given to this problem of making sure that you have properly trained and qualified people doing this, it happens in other places, and I am going to see to it that it is not repeated.

Mr. YATES. Well, I had heard about this from other sources, too. It is amazing how the cases crop up.

Mr. CLAYTOR. Sure.

Mr. YATES. As you will hear about this, of people who have been unjustly treated, and I hope that with your new system this kind of complaint will disappear.

I know that you will have some difficulties, but I hope and I expect that it will be corrected, and I intend to follow it, and I know that Mr. Lehman does.

APPEAL PROCESS

Mr. **Claytor**. One other point, Mr. Yates. There is a safety valve. In every case appeal lies to a totally impartial body, and appeal had been taken in this case, which will now be dismissed.

Mr. **Yates**. Well, may I then continue, Mr. Chairman?

The employee has a very difficult time here, Mr. Claytor, and I think you ought to look into this aspect of it.

I asked my constituent whether he was getting adequate representation from his union. He said that he thought it could be better at the time. I read the record. I thought his union representative did a fairly good job on this aspect of the case, judging from the record itself.

But then he also was told that he could go to court. Well, he does not have the money to go to court. He asked a lawyer to look into the case. The lawyer did, and came back and said, "You have a good case." He said, "But in order for me to take the case, you'll have to pay me $2,500 for a retainer."

So to all intents and purposes that was out. That is why he came to me.

Mr. **Claytor**. Well, Mr. Yates, no, the court case that we were discussing was a court case under EEO for a violation. That was not involved in this case. In every one of these discipline cases, if his union agrees, the union takes the appeal to a public law board. It is an administrative appeal to a neutral, set up under the Railway Labor Act. They review the whole thing, and they have complete power to affirm the dismissal, to say the punishment is too strict; you should just take him out of his duty for 30 days, or reverse the whole thing and say he is entitled to be put back to work, and that is a safety valve on it. It does not involve any expense to the man to take that administrative appeal. It is taken by a union, and the union had taken it in this case, was planning to. I think they had already filed the papers, but that is not any reason for us not to fix it before it gets to that point.

But there is that safety valve in the system which is set up by law and by union agreement.

Mr. **Yates**. Well, apparently you need more safety valves than that one, and I am sure you have in the operation of your trains, and you ought to have more safety valves in your employee relations as well, as this case indicates.

At any rate, I am grateful to you for looking into the matter and for taking proper steps to correct the injustice by putting the employee back to work.

As I indicate, I am grateful, too, that you intend to look into the matter on behalf of all of your employees to make sure that their rights are more fully protected.

Mr. **Claytor**. Well, it is important for us, for the company as well as the employees.

COMMITTEE LABOR RELATIONS REVIEW

Mr. **Lehman**. I want to thank Mr. Yates more fully, but I would like at this time just to say that although Mr. Yates is not asking for an investigation by the full Committee, we intend to review this next year in the hearing process, we will ask for a report, and we will be looking for major improvements in the status of these problems within the Amtrak organization.

In the meantime, if additional problems continue to surface before that time, we will consult with you and perhaps move to an investigation, as need be, before the hearings.

Mr. **Claytor**. I hope you have a report on that long before we have to meet next year.

Mr. **Lehman**. We want to see as soon as possible what concrete actions you take on a week-to-week and month-to-month basis as you report to this committee.

And I just want to thank Mr. Yates, and I think the country should thank Mr. Yates. Besides dealing with all of the vast problems of our oil reserves and doing away with "yellow rain," he can stop long enough to deal with injustice to one single human being.

Mr. **Yates**. Well, that is important, and Mr. Claytor, I am sure, recognizes it because he took the action to do it, and I think that he deserves to be commended for that.

I want to point out, Mr. Chairman, that as Mr. Claytor points out, you and I and Mr. Claytor are not going to wait a year for this, that if something surfaces, I am going to the Appropriations Committee and ask for an immediate investigation.

Thank you, Mr. Chairman.

Thank you, Mr. Claytor.

Mr. **Lehman**. And I want to thank Mr. Claytor for his very forthright response to this problem.

Mr. **Claytor**. Thank you.

REVENUE ESTIMATES

Mr. **Lehman**. Under "Revenue," Amtrak's fiscal year 1985 budget assumes revenues of $873.3 million, which is 13.2 percent increase over 1984 level of $771 million.

Mr. Riley, over the years, the FRA has sometimes criticized Amtrak for "low balling" its revenue estimates. Do you have any reservations about the $873 million estimate for fiscal year 1985? Are they "low balling" us again?

Mr. **Riley**. No, I have no reservations at all.

In fact, we have consulted with Amtrak on the basis used to make these estimates since I came over to the agency in November, and there now is complete agreement.

BACK PAY

Mr. **Yates**. Would you yield for just a second?

Mr. **Riley**. Yes, I will.

Mr. **Yates**. Mr. Claytor.

Mr. **Claytor**. Yes, sir.

Mr. **Yates**. You said you had rehired Mr. Grossman. What about his back pay?

Mr. **Claytor**. He will get back pay.

Mr. **Yates**. Okay.

[Laughter.]

Mr. **Yates**. I wanted the record to show that.

Mr. **Claytor.** Oh, yes. Well, that is automatic, Mr. Yates. That is automatic. When a thing like this is overturned, he goes right back to back pay from the time he was taken out of service.

REVENUE ESTIMATES

Mr. **Riley.** Mr. Chairman, it seems to me that the disputes between Amtrak and the FRA, on the basis of statistical measurements, are counterproductive and, frankly, just downright silly on both parts.

When I came over in November, we began to work with Amtrak to develop a common base from which we would make projections. We are in agreement on all projections.

RIDERSHIP UPTURN

Mr. **Lehman.** Mr. Claytor, you mentioned in your statement that 1983 was a poor travel year. What kind of ridership upturns are you projecting for fiscal years 1984 and 1985, and how do these projections compare with those of the airlines and intercity buses?

Mr. **Claytor.** Well, we project we had 19 million passengers in 1983, and we project about 19.9 or 20 million passengers for 1984, and we are expecting about 300,000 additional passengers, or about 20.2 or 20.3 million passengers in 1985.

The big upturn in 1983 to 1984 came about because the recession really ended. Things began to move very fast.

I am dubious about being able to get much more than three or 400,000 passengers over 1984, in 1985. However, we are going to do the best we can. If we can get more, we are going to try mighty hard.

Incidentally, Mr. Chairman, I might say if you go back several years, you will find that we overestimated our passengers and revenue steadily in the initial projections as the business began to go down. So we have been off both ways, and the art of estimating what is going to happen 18 months from now is not very highly refined.

Mr. **Lehman.** Are your projections about in line with the airlines or the intercity buses?

Mr. **Claytor.** We do not have any airline and bus projections. They are not made on an industry basis. So we do not know.

RIDERSHIP REVENUE DATA

Mr. **Lehman.** Mr. Claytor, please update for the record the ridership and revenue performance charts found on page 530-531 of last year's hearing record.

[The information follows:]

The ridership and revenue information requested follows:

National Railroad Passenger Corporation, 400 North Capitol Street, NW, Washington, DC 20001

Amtrak

February 11, 1986

Ms. Linda Watson
3409 Schulze Lane
Steger, IL 60475

Dear Ms. Watson:

I have reviewed your letters of January 10 and January 13, 1986, in which you suggested that your and two other employees' recent terminations were in conflict with Amtrak's Mission Statement and that misrepresentations about your termination have been spread by officials within your department.

With regard to your termination, that action was taken only after your department had carefully considered your conduct and you had an opportunity to explain your actions. The Personnel Department concluded that your involvement in an attempt to provide company materials to a non-Amtrak employee, whose interests were known to be adverse to the company's, not only violated Amtrak's own business standards and procedures but also our Rules of Conduct. Your actions also demonstrated a serious lack of judgment. Accordingly, the department decided that it could no longer continue to employ you in a position of trust and responsibility. It is also my understanding that you had previously been warned in the past that acts such as this would not be tolerated by the Corporation. With regard to your comments concerning the terminations of Ms. Kauzlarich-Helsel and Ms. Walton, it would be inappropriate to comment on personnel actions taken with regard to other employees. I would note, however, that your statement in your letter of January 10, 1986 to me that Ms. Walton was unaware of the contents of the envelope forwarded by you to her is inconsistent with statements you made to Mr. Blum on January 3, 1986 during his interview with you concerning this matter.

With regard to your statement that Messrs. Engel and Blum made misrepresentations concerning your termination, I can assure you that both men deny ever telling any persons that the envelope in question contained a personnel file or that you were terminated because you had "leaked" confidential information to Mr. Racich. Apparently, whoever made such statements to you was misinformed. Circumstances surrounding the termination of employees are confidential and are generally not to be discussed except between persons who legitimately have a need to be aware of them. Unfortunately, rumors and misstatements made by persons who do not have knowledge of the true facts do occur and, regrettably, that appears to have happened with regard to your

Ms. Linda Watson
February 11, 1986
Page 2

termination. Although I have no control over such rumors, I do not believe that the management officials involved in your termination have made such misrepresentations or have failed to maintain confidentiality concerning the circumstances of your termination.

While I can appreciate that you do not agree with the decision to terminate your employment, nonetheless it was a decision made by your department after thoughtfully considering your serious lack of judgment and misconduct in sending unauthorized Amtrak materials to Mr. Racich. [redacted] o[redacted] ~~information I have obtained, I cannot disagree with the department's decision to terminate you from your position.~~

Thank you for bringing your concerns to my attention.

[redacted]

W. Graham Claytor

[redacted]

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois 60606

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
#P-456-073-973

Amtrak

February 11, 1986

Ms. Linda Watson
3409 Schultz Lane
Steger, IL 60475

Dear Ms. Watson:

I am in receipt of your letter dated January 10, 1986.

You have requested answers to many questions throughout your letter, so I will attempt to answer them in the order in which they were presented.

You asked for clarification concerning the date your Administrative Leave was effective. Your Administrative Leave without pay was effective January 3, 1986. All benefits and pay ceased on midnight of January 3, 1986. This information was relayed to you verbally, in a telephone conversation with me, at approximately 3:30 p.m. on January 3, 1986.

With regard to your inquiry as to why you were placed on Administrative Leave without pay, it is Amtrak's policy that all management employees who are placed on Administrative Leave pending the results of an investigation into matters concerning policy violations do not remain in a pay status. In our telephone conversation of January 3, 1986, you asked me about a specific individual, who you thought had been paid while he was on Administrative Leave. In this case your understanding was incorrect, and the individual in question was not paid and did not receive benefits during his Administrative Leave.

You further asked what specific practices and procedures I referred to in your termination letter. In my January 7, 1986, letter to you I stated that, "your conduct violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct." I was referring to Amtrak's Procedures Manual PA-16 (Termination Policy), and Amtrak's Rules of Conduct, both of which you were familiar.

(Continued)

Your next two questions were, "You state that I used "lack of judgment." In what way? You state that I was "dishonest". What was my dishonest act?" By sending Amtrak Personnel Letterhead stationery to Val Racich, a former employee known to have interests adverse to this company, you did not use good judgment. You were dishonest by asking Mr. Racich, who is no longer your supervisor, or an employee of Amtrak, to write you a reference letter on Amtrak Personnel Department letterhead stationery.

You then asked me to clarify to what past incidents I was referring. The past incidents I was referring to were the previous investigations concerning repairs to your private auto by Amtrak employees on Amtrak property, the Officer Hrubec investigation, the missing Onboard Service test investigation, and the Steno test investigation, all investigations in which you were involved. On all of these incidents you were counseled by either me or Mr. Engel, concerning credibility and confidentiality within our department. I had also talked to you and all members of my staff, in various staff meetings, concerning adherence to policy and procedures, credibility and confidentiality.

You also inquired as to whether you were discharged for a past incident or sending intra-office mail to J. Walton. You were terminated from the employment of Amtrak for your unauthorized attempt to furnish Amtrak Personnel Department letterhead stationery to an ex-employee of Amtrak, which you admitted to me. In light of your past counselings, you were knowledgeable that misconduct of this nature would not be ignored or tolerated.

With regard to the return of your personal belongings in the office, I personally made the decision to send these items to your home and I collected them from your office and packed them. Contrary to your statement, other staff members did not perform these tasks. The decision to send your personal items rather than allow you to collect them was done to alleviate any awkwardness that might have surfaced by your appearance. Considering the circumstances, I still feel that this was the best decision.

Your possessions were sent to your home, via bonded courier, on January 15, 1986. On January 16, 1986, your Service Letter was remailed to your home due to an administrative error made on the previous letter of January 13, 1986.

(Continued)

With regard to outplacement services for you, the decision is that there are non available for you.

You also stated in your letter that you did not feel that the investigation that was conducted was fair, open and honest. The investigation that was done included our discussion in your office on January 3, 1986 at 9:30 a.m. At that time, you were given the opportunity to discuss this matter with me, and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with facts concerning the incident. You admitted your actions to me, and I had no choice but to remove you from your position.

With regard to your request for various documents, a copy of your entire personnel file is enclosed. This file includes data on salary, promotions, and performance evaluations. There are no working files with regard to you other than your personnel file. With regard to documents concerning the investigation leading to your termination, all investigative records are the sole property of Amtrak and corporate policy prohibits their disclosure to you.

Sincerely,

Frank T. Blum
Division Manager
Human Resources

Enclsoure

National Railroad Passenger Corporation, 210 South Canal Street, Chicago, Illinois 60606

CERTIFIED-RETURN RECEIPT REQUESTED
#P-456-073-972

Amtrak

February 11, 1986

Ms. Cheryl Kauzlarich-Helsel
345 Nokomis
Park Forest, Illinois 60466

Dear Ms. Kauzlarich-Helsel:

I am in receipt of your letter dated January 11, 1986.

You have requested answers to many questions throughout your letter, so I will attempt to answer them in the order in which they were presented.

You asked for clarification concerning the date your Administrative Leave was effective. Your Administrative Leave without pay was effective January 3, 1986. All benefits and pay ceased on midnight of January 3, 1986. This information was relayed to you verbally, in a telephone conversation with me, at approximately 3:30 p.m. on January 3, 1986.

You also inquired as to the specific Rules of Conduct to which I had referred. I was referring to Amtrak's Rules of Conduct, of which you were a recipient, specifically, Rule F, paragraph 3; Rule K; and Rule N.

You wanted to know in what way you showed lack of judment and dishonesty. By sending Amtrak Personnel letterhead stationery to Val Racich, a former employee known to have interests adverse to this company, you clearly did not use good judgment. You were dishonest by asking Mr. Racich, who is no longer your supervisor, or an employee of Amtrak, to write you a reference letter on Amtrak Personnel Department letterhead stationery, as well as misappropriating company materials.

You further asked what specific practices and procedures I referred to in your termination letter. In my January 7, 1986, letter to you I stated that, "your conduct violated Amtrak's established business standards and procedures, as well as Amtrak's Rules of Conduct." I was referring to Amtrak's Procedures Manual PA-16 (Termination Policy), and Amtrak's Rules of Conduct, both with which you were familiar.

You then asked me to please clarify to what past incidents I was referring. The past incidents were the previous investigations concerning Officer Hrubec in which you were involved. Also, on several occasions I had talked to you and all members of my staff, in various staff meetings, in various staff meetings, concerning adherence to policy and procedures, credibility and confidentiality.

You also inquired as to whether you were discharged for a past incident or for sending intra-office mail to J. Walton. You were terminated from the employment of Amtrak for your unauthorized attempt to furnish Amtrak Personnel Department letterhead stationery to an ex-employee of Amtrak, which you admitted to me. In light of your past counselings, you were knowledgeable that misconduct of this nature would not be ignored or tolerated.

With regard to the return of your personal belongings in the office, I personally made the decision to send these items to your home. I collected them from your office and packed them. Your possessions were sent to your home, via bonded courier, on January 15, 1986.

You also stated in your letter that you did not feel that the investigation that was conducted was fair, open and honest. The investigation that was done included our telephone discussion on January 3, 1986 at approximately 9:45 a.m. At that time, you were given the opportunity to discuss this matter with me, and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with facts concerning the incident. You admitted your actions to me, and I had no choice but to remove you from your position.

With regard to your request for various documents, a copy of your entire personnel file is enclosed. This file includes data on salary, promotions, and performance evaluations. There were no working files with regard to you other than your personnel file. With regard to documents concerning the investigation leading to your termination, all investigative records, including those of other employees, are the sole property of Amtrak and corporate policy prohibits their disclosure to you.

Sincerely,

Frank T. Blum
Division Manager
Human Resources

Enclosure

Mr. **Porter**. Mr. Chairman, I am aware of the fact that only two years ago, my colleague and Illinois neighbor, Congressman Sid Yates, was compelled by Amtrak's treatment of one of his constituents to request Mr. Claytor's review.

That review was prompt and decisive and the employee was reinstated to his former position with full back pay.

Regrettably, I must now proceed on behalf of my constituent, who, in my view, may have suffered an injustice at the hands of local management. And I am concerned particularly, because she was an employee who testified before a House Government Operations Subcommittee and testified contrary to her position within management at Amtrak.

At the beginning of this year, my Prospect Heights, Illinois, constituent, Ms. Jodie Walton came to my office with a complaint. She had been dismissed from her Amtrak labor relations management job at Chicago's Union Station. She requested my assistance in light of the fact that only a year earlier the Transportation Subcommittee of the House Government Operations Committee had compelled her to testify here, in Washington. She alleged that her dismissal was related to her testimony and she vigorously denied any wrongdoing. My office accepted her case for consideration.

The description of facts surrounding Ms. Walton's dismissal is disturbingly obscure in correspondence from Amtrak to Ms. Walton as well as correspondence from Amtrak to the Congress.

Apparently two female Amtrak employees at a different location in Chicago sent Mrs. Walton an envelope in internal Amtrak mail which contained 17 sheets of Amtrak letterhead and two notes to a former Amtrak official.

Both Amtrak and the two women agree that the notes request backdated letters of reference. Amtrak intercepted the envelope, interviewed the two women, and Mrs. Walton and dismissed all three, apparently because the former Amtrak official had "interests adverse to Amtrak".

This former official, a resident of Evanston, Illinois, has a case against Amtrak in Federal Court complaining of age discrimination.

That complaint has already been upheld by the Illinois Department of Human Rights and the U.S. Equal Employment Opportunity Commission.

And the basis of Mrs. Walton's dismissal disturbed me. Amtrak's letter of dismissal read "we have conducted a thorough investigation concerning your involvement in attempting to forward Amtrak company material to a non-Amtrak employee whom you knew to have interests adverse to this company. Because of your involvement we cannot continue to employ you in your current management position of trust and responsibility."

Remember that this missile was internal mail which she never received. It was intercepted prior to receipt.

Her involvement was never described to her in that letter or according to Mrs. Walton "at any other time."

Because of Mrs. Walton's complaint to me alleging reprisal for her Congressional testimony, my office contacted the Subcommittee before which Mrs. Walton testified. The Subcommittee Chairwoman, Cardiss Collins of Illinois, indicated that she was conducting her own investigation.

In light of my interest she agreed to promptly supply her report to me. Meanwhile I reviewed Mrs. Walton's case further. I reviewed the transcript of Mrs. Walton's sworn testimony and realized its significance.

She covered serious labor abuses occurring in Amtrak's Chicago operations. I then reviewed correspondence between Congressman Yates and Mr. Claytor concerning Mrs. Walton's superior who had placed her on probation with Mr. Claytor's approval one week after she testified.

Mr. Yates described the probation as outrageous and a palpable breach of Mr. Claytor's promises to Congress.

The central issue in this dismissal, from my perspective, was whether Amtrak could justify its dismissal of my constituent, a Congressional witness, who was compelled to testify under oath.

Needless to say, the burden of proof is on Amtrak to support the action. In other words, Amtrak should have clearly established by evidence that my constituent knowingly engaged in wrongful misconduct. This week, Chairwoman Collins completed her investigation and issued her report to Mr Claytor.

The investigation concluded that Amtrak had no legitimate basis whatsoever to fire Walton, there was not a shred of evidence to support the conclusion that Mrs. Walton was the knowing, intended recipient of a packet containing 17 pieces of unused Amtrak stationery

The report was based on four lengthy, sworn affidavits addressed to Congress. I am informed that each affidavit was completed in isolation so that inconsistencies would come to light. None arose. In the affidavits each participant fully described his or her participation in the incident underlying Mrs. Walton's dismissal. The 25 pages of affidavit go far beyond the few paragraphs that Mr. Claytor supplied in his report to Mr. Yates and Mrs. Collins. They provide a very detailed chronological review of all relevant periods of time.

I have reviewed these affidavits and they are here. Neither of the two individuals who sent my constituent the envelope told her that they had sent Amtrak stationery. In fact, neither spoke to her or the former Amtrak official until after the investigation had been completed.

After reading these sworn affidavits I must concur with the March 10 Subcommittee report. Only two individuals knew that the envelope sent to Mrs. Walton contained stationery and neither told her.

Hence, Mrs. Walton was apparently fired for being the addressee on the envelope and nothing more. I would add that Chairwoman Collins and I are not alone in drawing this conclusion. I have here for presentation to Mr. Claytor, a letter from virtually the entire Chicago, Illinois Congressional delegation, as well as our Committee colleague, Mr. Durbin, of downstate Illinois and Illinois' two very able Senators.

We are requesting of you, Mr. Claytor, to exercise your Presidential authority to reinstate Mrs. Walton to her former position with full back pay.

I should point out, before I conclude, that early yesterday morning, Amtrak representatives supplied my office with new information, statements from investigators which were apparently not supplied to either Congressman Yates or Congresswoman Collins. I reviewed the submission of new information, nonetheless, and I concluded that no reasonable person reviewing the dismissal decision could have upheld the dismissal on the basis of these interview summaries.

Inconsistencies between the investigators' report and disturbing ambiguities on the questions that they have reportedly asked, convinced me even more that this entire dismissal has been badly handled. I do not understand how any employees could be fired on the basis of such ambiguous reports. That a Congressional witness would be fired on this basis is all the more disturbing.

I assume, despite Mr. Claytor's expressed approval of Mrs. Walton's dismissal decision, that, in fact, his advisors actually reviewed the interview reports. I urge, you, Mr. Claytor, to personally review this entire matter.

If, as I am certain, you will conclude that no credible evidence exists that my constituent has engaged in wrongful conduct. I join the Congressional delegation in urging you to reinstate Mrs. Walton to her past position with full back pay.

There appears to be no justification for leaving Mrs. Walton any less the whole for her trauma in this senseless situation. I am especially concerned that she be placed in the same job. If there are employees in your organization who are eager to seek her removal as some have concluded, an attempt could be made to consciously place her in a position for which she may not be qualified to perform and then seek her dismissal for poor performance. Mr. Claytor, I urge you, personally, to look into this matter, and to review the evidence, and we, in the Congress, obviously take great concern when a Congressional witness, who has testified under oath against the position of management of Amtrak, then suddenly is fired without cause.

That is a matter of great concern to the entire Congress, to this Subcommittee, to the entire Appropriations Committee and I would urge you, sir, to take a very, very careful look at this matter and to respond to our questions in full.

Mr. LEHMAN. Mr. Porter, for the time that we have here, what I propose is that we will stay here until the second bell and then adjourn for lunch and then come back at 1:30.

How does that suit everybody?

Mr. PORTER. I suggest that Mr. Claytor may want to make a short response and then undertake the questions.

Mr. CLAYTOR. I can respond quickly.

Mr. Porter, first of all, I will not tolerate the improper dismissal of any employee whether Congressional witness or not. And I am perfectly satisfied that my instructions which were explicit and have been followed up by me and by my top management people that there was to be no retaliation against any witness, management or otherwise who testified, were followed up.

I did also make clear, however, and I made clear to the Congressional Committee involved, that this was not a grant of immunity to anybody. That if some employee engaged in misbehavior, that they would be disciplined regardless of whether they had been a witness and that I could not thereby exempt them from future discipline.

Now, I am satisfied that this action had no relationship to Mrs. Walton's testimony. The evidence that I have and have had up until now, is that the packet of material was not intercepted, in fact, it was misdelivered to one office. And opened by that office and then it was discovered what it was and was referred to local management.

And that all persons involved were interviewed extensively and that both the people who had sent the material admitted that they knew what the package contained and stated that Mrs. Walton knew its contents and was expecting the package and had planned to deliver it for purposes of, in effect, a forged endorsement, by this outside man.

Now, that to me, was a very serious offense. And I felt that the dismissal under the circumstances was called for.

Now, I will look at all the information that you submitted here. My people who told me that they are prepared to testify under oath themselves. But I will look at all the evidence and if I find that Jodie Walton or anyone else involved in this was improperly dismissed, or was improperly treated, she will be reinstated.

But I am not prepared to do so now because my evidence is to the contrary and we have a conflicting witness reports on this, in fact.

Mr. PORTER. Well, Mr. Claytor, obviously I cannot ask for more than that. That is exactly what I am asking you to do. I think that it is a very, very serious matter and that it involves the integrity of the Congress as well as the integrity of Amtrak.

Our evidence, of course, shows exactly the opposite of yours. Please take a very, very careful look at all of this and I certainly have a very high regard and respect for you and I am certain that you will see that justice is done.

Mr. CLAYTOR. We will do so.

Mr. PORTER. My first question is this. Mr. Blum's co-investigator, Ms. Thornton, wrote a rather detailed paraphrase of her recollections of the dialogue between Mr. Blum and Linda Watson. In fact, it was her failure to corroborate Mr. Blum on a key point involving Ms. Walton that caused me to loose any residual confidence in the Amtrak investigation.

On another point, though, Mr. Thornton reported that Mr. Blum at the interview's conclusion, stated: "It is in the hands of Washington [headquarters], Linda, which means it is totally out of my control."

A letter from you to Ms. Watson will be entered into the record here and then I have some more specific questions.

[CLERK'S NOTE.—The letter referred to may be found on pages 492 and 493.]

Mr. PORTER. Who made the decision to dismiss Ms. Walton from her management job?

[The information follows:]

Mr. Joe Carter made the decision to dismiss Ms. Walton from her management job. The decision was reviewed by his superiors in the Labor Relations Department and by the Law and Personnel Departments in Washington, D.C.

We are compelled to disagree with the statement on page 69 that Ms. Thornton "fail[ed] to corroborate Mr. Blum on a key point involving Ms. Walton. . ." In fact, Ms. Thornton confirmed, both orally and in a written affidavit, that Ms. Watson stated that Ms. Walton knew the contents of the envelope. In addition, both Mr. Carter and Mr. Garofalo were convinced that Ms. Walton knew what was in the envelope.

Mr. PORTER. Who reviewed that decision?

[The information follows:]

The decision was reviewed by George Daniels, Vice President Labor Relations Mr. Harold Henderson, Vice President-General Counsel, and John Stulak, Vice President of Personnel concurred in the decision. I was also consulted and approved the decision to remove her from her position.

Mr. PORTER. What was your role, Mr. Claytor, as President of Amtrak?

[The information follows:]

After receiving and considering reports from the Law, Personnel and Labor Relations Departments, I approved the decision.

Mr. PORTER. What will your role be in correcting the matter?

[The information follows:]

If I find that Ms. Walton was wrongfully removed from her position, I will overturn the decision and reinstate her to her previous position. I have no evidence, however, that Mr. Carter's decision was not appropriate or was based on any desire to retaliate against her because she testified at the September, 1984 Subcommittee hearing. In view of the clear understanding I had with Mr. Carter when he was first assigned to his present position in 1985 that under no circumstances was there to be retaliation against Ms. Walton or any other Congressional witness, I am satisfied that this was not a factor in his decision.

Mr. PORTER. In reviewing only the evidence your investigators collected, I found there was virtually nothing to support a finding that Ms. Walton was guilty of misconduct. One investigator recalled Ms. Linda Watson had said that Ms. Walton knew what was in the envelope. The investigator's companion, who wrote an extensive summary of the interview did not even corroborate that key element.

Ms. Helsel was never asked if Ms. Walton knew the contents of the envelope. Ms. Walton insisted that she was expecting a resume—that is all.

As an attorney, Mr. Claytor, how would you describe, legally, the burden of proof required to support a finding of guilt, for personnel decisions like dismissal, suspensions, and other actions?

[The information follows:]

"Burden of Proof" is a judicial doctrine applicable to proceedings in court but not to management employment decisions. In court, a plaintiff always has the legal burden of proving his or her case. The precise elements of the burden of proof, however, differ according to the cause of action alleged.

Mr. Carter based his decision on extremely strong evidence that Ms. Walton was guilty of serious misconduct. As you note, one of the investigators, Mr. Blum, reported in his original statement that Ms. Watson admitted that Ms. Walton knew what was in the envelope. Ms. Maureen Thornton, who acted as an impartial witness, did not incorporate that information in her statement because she was unable to take notes quickly enough to record every question and answer. However, she did corroborate both orally and in a sworn affidavit that Ms. Watson said that Ms. Walton knew what was in the envelope. Ms. Helsel was never asked directly if Ms. Walton knew the contents of the envelope although she volunteered that the letterhead was intended for Ms. Walton. It was clear to the two investigators from her statements that Ms. Walton was expecting letterhead, not a resume.

Significantly, neither Ms. Helsel nor Ms. Watson mentioned the word "resume" during the course of their interviews.

Furthermore, Mr. Carter and Mr. Garofalo were convinced that Ms. Walton knew that the envelope contained a letterhead. At no time did she challenge Mr. Carter's characterization of the contents of the envelope as "company materials," rather than a personal resume. Moreover, she admitted that she knew what was in the envelope and that she intended to deliver it to Val Racich.

Mr. **Porter**. Did Amtrak decisionmakers meet the required burden of proof in Ms. Walton's case?

[The information follows:]

As discussed in response to the previous question, the "burden of proof" is applicable only to a judicial action, not to a management decision. I do expect, however, that before significant personnel decisions are made that the appropriate management officials have thoughtfully reviewed the matter.

I am convinced that Ms. Walton's supervisor acted on the conviction that she knew what was in the package, was expecting it, and intended to pass the letterhead to an ex-employee. Her supervisor remains convinced in this as does the witness present at the interview. I have learned nothing to date to suggest that her supervisor had any question that she was aware of the contents of the package.

Mr. **Porter**. This situation Ms. Walton faced was avoidable in my opinion.

First, a genuinely thorough investigation would not have produced these unfortunate results. At a minimum, we see here a poor investigation with little concern for accurate findings. Secondly, we clearly have a very poor review by corporate officials of the quality of this local investigation.

What concerns me even more is that an employee who freely admitted her misjudgment apparently tried in vain to warn the Corporation that the Amtrak wheels of justice had wrongfully trapped Ms. Walton.

On January 10, 1988, Ms. Linda Watson wrote both you and Mr. Blum, her supervisor, and one of the investigators in apparent concern over investigative errors.

On February 11, 1986, you responded:

"With regard to your comments concerning the termination of Ms. Kauzlarich-Helsel and Ms. Walton, it would be inappropriate to comment on personnel actions taken with regard to other employees. I would note, however, that your statement in your letter of January 10, 1986 to me that Ms. Walton was unaware of the contents of the envelope forwarded by you to her is inconsistent with statements you made to Mr. Blum on January 3, 1986 during his interview with you concerning the matter."

Yet, on the very same day, Mr. Claytor, Mr. Blum responded to Mr. Watson:

"With regard to [your request for] documents concerning the investigation leading to your termination all investigative records are the sole property of Amtrak and corporate policy prohibits their disclosure to you."

Mr. Claytor, why did you not look into this matter when Ms. Watson wrote you on January 10, 1986?

[The information follows:]

I was fully briefed on this matter prior to the three employees' termination from employment. I was satisfied at that time that the action was the appropriate one. As I stated in my letter, Ms. Watson's statements were contrary to the ones she, made earlier, when first confronted about the incident. She presented no new credible evidence which would warrant review of the matter. Both witnesses to the initial interview with Ms. Watson have stated that she indicated Ms. Walton was knowledgeable about the contents of the package.

We believe that the investigaiton was a thorough one, conducted with great concern for the accuracy of our findings. We also believe that there was a careful and thoughtfull review of the action by Amtrak corporate officials.

Mr. **Porter**. Linda Watson encountered a "Catch 22" situation: She warned you of an important investigative error, you cited information that she made a conflicting statement, and poor Ms. Watson could not get the information to track down the conflicting statement.

How can you prevent future Jodie Walton's from becoming the victim of similar "Catch-22's"?

[The information follows:]

I do not believe that Ms. Watson or Ms. Walton encountered a "Catch 22" situation. Ms. Watson was advised that Mr. Blum reported that she had confirmed Ms. Walton's knowledge in her meeting with Mr. Blum on January 3. The summary Mr. Blum wrote at the time did not contain different information. Ms. Watson, no doubt, would disagree with Mr. Blum's recounting of the meeting whether she had seen the statement or not. The only entanglements Ms. Watson, or Ms. Walton, found herself in was the result of later attempting to contradict earlier remarks confirming Ms. Walton's knowledge.

Mr. **Porter**. In reviewing Ms. Walton's case, I relied heavily on your letters to Mr. Yates and Mrs. Collins in which you provided your report of your investigation. Please be mindful, that my chief concern is what evidence there was that Ms. Walton was expecting Amtrak letterhead.

In both letters you stated:

"Both [Personnel Department employees] readily admitted that they knew what the packet contained and that Ms. Walton knew its contents, was expecting the packet, and planned to deliver the packet to Mr. Racich."

I reviewed the investigator reports you supplied to me yesterday. One investigator interviewing these two employees reported one employee said Ms. Walton knew the contents. The other investigator did not even corroborate this key report. The employee herself denies making such a statement.

As for the other employee there is complete accord. She and the two investigators all agree:

a) She was never asked if Ms. Walton knew the contents.

b) She never stated that Ms. Walton knew its contents.

Why did you report to Mr. Yates and Mrs. Collins that "both readily admitted . . . that Ms. Walton knew its contents when Amtrak's internal reports flatly contradicted this representation?

[The information follows:]

Oral reports from the investigators confirm that, according to both employees, Ms. Walton knew the contents of the envelope. Amtrak's internal reports did not flatly contradict this representation. Mr. Blum, one of the investigators, reported that Ms. Watson stated that Ms. Walton knew the contents of the envelope. The other investigator, Maureen Thornton, did not include the information in her statement, but verbally corroborated this.

Cheryl Helsel, the second employee, was never directly asked if Ms. Walton knew the contents of the envelope. It was clear to both investigators, however, from Ms. Helsel's statements that Ms. Walton knew what was in the envelope.

Moreover, the oral and written reports of the two investigators who questioned Ms. Walton directly confirm that she knew what was in the envelope.

Subsequent sworn affidavits signed by the four interviewers further confirm that Ms. Walton was aware of the contents of the envelope.

Mr. **Porter**. I will submit this letter for the record, Mr. Chairman.

[The letter referred to follows:]

[illegible] Capitol [illegible] NW [illegible]

Amtrak

January 28, 1986

Honorable Sidney R. Yates
U. S. House of Representatives
2234 Rayburn House Office Building
Washington, DC 20515

Dear Representative Yates:

I am responding to your January 10 letter concerning Amtrak's decision to remove Ms. Jodie Walton from her position as Labor Relations Supervisor effective January 7, 1986.

I very much regret you have assumed that Amtrak's decision to dismiss Ms. Walton is in some way related to her appearance before the House Subcommittee on Government Activities and Transportation. I have given the Subcommittee my full assurance that I would personally ensure that Amtrak employees would suffer no retaliation because they appeared as witnesses before the Subcommittee; I remain committed to that promise. The actions taken with regard for Ms. Walton were in no way related to her appearance before that Subcommittee. However, I also stated, both in my testimony and in letters to you and the Subcommittee, that no employee should enjoy immunity for future misconduct simply because he or she had testified; each should continue to be treated fairly, neither preferentially nor prejudicially.

As you are aware, Ms. Walton has been subject to probation on several occasions in the past, both prior to and after her appearance before the Subcommittee, for failures to perform her assigned duties satisfactorily. I would like to provide you with the details surrounding the most recent incident in which she was involved which resulted in her dismissal.

During December 1985, a packet of company material addressed to Ms. Walton was intercepted by the Division Manager Human Resources, Chicago. The packet contained numerous pieces of Personnel Department stationery with notes from two Personnel Department employees to a former Amtrak manager, Mr. Val Racich, which the two employees allege was for the purpose of having Mr. Racich write back-dated reference letters. Before his dismissal Mr. Racich had been Amtrak's Division Manager Human Resources in Chicago. Mr. Racich currently has litigation pending against Amtrak over his dismissal and therefore, in light of his antagonistic interest to the Corporation, it would be highly inappropriate to send blank company stationery to him.

On January 3, 1986, both Personnel Department employees were interviewed by Division Manager Human Resources, in the presence of the Regional Administrator Human Resources. Both readily admitted that they knew what the packet contained and that Ms. Walton knew its contents, was expecting the packet, and planned to deliver the packet to Mr. Racich. Those employees held responsible management positions which require a high level of confidentiality and discretion.

Although Ms. Walton has apparently informed you that no one spoke to her about the allegations, this is simply untrue. Mr. Joe Carter, the current Manager Labor Relations in Chicago, interviewed Ms. Walton on January 3, 1986, in the presence of the Manager Internal Audit.

After a careful review of all of the facts the two Personnel Department employees were terminated, and Ms. Walton was formally removed from her position on January 7, 1986. A copy of the January 7, 1986 letter is enclosed. Clearly, company materials were being distributed without the approval or knowledge of responsible Amtrak officials to a non-Amtrak employee for highly questionable purposes. The involved parties' acknowledgement of their wrongdoing is clear and irrefutable. Given Ms. Walton's access to highly confidential company materials, as well as her prior discipline record, management concluded that she could no longer be employed in a responsible management position. However, she retained her union seniority through which she had the right to alternate employment at Amtrak.

I hope this information assists in your understanding of Amtrak's position in this matter. If you have any further questions, please let me know.

Sincerely,

W Graham Claytor

W. Graham Claytor, Jr.
President

Enclosure

Mr. PORTER. I am troubled by the investigative technique employed by your Chicago mangement, as evidenced in their own reports and these affidavits.

It appears that vague questions were asked like "explain" "tell me everything you know about . . ." etc. Here the record, without exception, establishes a key question was never asked by Amtrak investigators:

"Did you tell Ms. Walton that the envelope would contain Amtrak stationery?"

Investigator failure to ask this clear question resulted in this investigation's collapse.

Responding to letters from both of his dismissed employees on February 11, Mr. Blum, the investigator, wrote to each:

> The investigation that was done included our discussion . . . on January 3, 1986. . . . At that time you were given the opportunity to discuss this matter with me and I was open, fair, and honest with you by elaborating on the seriousness of your actions and giving you the opportunity to provide me with the facts concerning the incident.

Mr. Claytor, do you agree with Mr. Blum, that thorough investigation results when the investigator gives the witness or accused an "opportunity to discuss this matter" or "an opportunity to provide the facts concerning the incident"?

[The information follows:]

Yes. Under the circumstances, I do agree with Mr. Blum on this.

Mr. PORTER. Mr. Chairman, I will insert that letter into the record at this time.

[CLERK'S NOTE.—The letter referred to may be found on pages 489 and 491.]

Mr. PORTER. Being an attorney accustomed to thinking in terms of "hearsay" restriction problems and "best evidence" rules, I was astonished in reading the affidavits that Amtrak investigators made no effort to obtain written statements from the principals in this incident.

The "best evidence" your investigators could provide were their interview summaries, hearsay at best, which were evidently prepared after the completion of the interviews.

Why were not statements prepared for the participants to review and sign?

[The information follows:]

It is not our Corporate practice when dealing when employees questioned about misconduct to prepare written statements and require employees to sign them. Indeed, employees who may verbally admit to wrongdoing are not inclined to sign such written statements. In such cases, we believe it is more important to obtain truthful responses to our questions, rather than written evidence. We routinely rely upon oral statements of our employees in such situations.

It is important to emphasize that we relied not only upon written statements, but also on oral reports from the interviewers regarding the content of the interviews, which oral reports have since been confirmed in sworn affidavits.

As an attorney, I know that "hearsay" and "best evidence" are rules that have no bearing on the decision to require written statements rather than rely on oral statements.

Mr. PORTER. Why were not the principals afforded an opportunity to approve tape recording the interview?

[The information follows:]

Tape recording of such interviews is contrary to our Corporate policy of facilitating an atmosphere conducive to frank and candid exchanges.

Mr. **Porter**. Why were the principals not interviewed again after investigative deficiencies became apparent?

[The information follows:]

Based on the written statements of our employees and oral discussions with them, we were convinced that they believed that all three individuals were aware of and intended that Company stationery was to be sent to an ex-employee. Although I or another management official might have asked different questions or asked the questions in a different manner, we believe that we succeeded in ascertaining the true facts.

Mr. **Porter**. If your investigators "believed" two principals had "implicated" Ms. Walton, why was not Ms. Walton afforded an opportunity to confront her accusers?

[The information follows:]

Ms. Walton was given a full opportunity to explain her actions. When initially questioned, she confirmed that she knew what the envelope contained. Because all three employees apparently agreed on the extent of Ms. Walton's knowledge, there was no inconsistency to investigate. Moreover, having other employees present during an interview designed to determine an employee's involvement in Company wrongdoing would be inconsistent with Company practice of affording an employee a private, confidential meeting to facilitate full, complete and candid discussion.

Mr. **Lehman**. The Subcommittee will stand adjourned until 2:15 p.m. for lunch.

MANAGEMENT OF AMTRAK

The Subcommittee will come to order.

Mr. Riley, are you satisfied about how the federal investment in Amtrak has been managed? Have they made sufficient progress in cutting costs and improving quality of service over the past few years?

Mr. **Riley**. I think Amtrak is an extremely well managed company and I think Graham Claytor deserves a great deal of credit for that. I think the biggest challenge lies ahead, but I have nothing but good things to say about Graham's management.

Mr. **Lehman**. Do you agree with that, Mr. Claytor?

[Laughter.]

Mr. **Claytor**. No comment, Mr. Chairman.

BUDGET RECONCILIATION

Mr. **Lehman**. Mr. Riley, I believe the reconciliation bill that passed the House last week authorizes Amtrak for fiscal years 1986, 1987, and 1988. If the President signs that bill, can we assume that you will follow through with an amended fiscal year 1987 budget request for Amtrak? And could we also expect a budget request next year for Amtrak?

Mr. **Riley**. Mr. Chairman, I think the Administration has made its position very clear that we are opposed to funding Amtrak, whether there is an authorization or not.

AMTRAK PROVISION IN RECONCILIATION

Mr. **Lehman**. Mr. Claytor, would you summarize for us the major Amtrak provisions in the House-passed reconciliation bill and give us an estimate of how much the provisions in that bill will save you in fiscal years 1987 and 1988?

Mr. CLAYTOR. Yes, sir. The most important pending legislation that we have got of course is the Budget Reconciliation Act.

It has a half a dozen items which are of considerable importance. The one involving the most money of course is additional compensation for operation of freight trains over the Northeast Corridor, and when this is approved, in effect, we then have to go to the ICC to get the final decision.

But some six months or so after it is approved, this should begin to save us between $20 and $30 million a year, depending on the volume of the freight.

The second-most important provision, then, is the provision clarifying the law to state that no labor protection is to be provided on frequency adjustments of seasonal modifications.

We contend that the contract already provides that, but we already have had claims filed for the frequency modifications we made in January.

There are some unions that have insisted that they are entitled to full compensation for any modification of any kind, and there has been one arbitration decision against us on that, although I think we intend to fight the rest of them, and I hope the others will not go that way.

The important thing is to get the law clarified, so that that issue is behind us, because without that flexibility it is almost impossible for us to do anything to cut costs quickly.

Then we have authority for Auto Train on a space available basis to carry automobiles without accompanying passengers, which will help revenue, particularly seasonally.

Requiring GSA to permit Amtrak to participate in their contract program for government employee travel, particularly in the NEC which they have refused to do so far, and again, that should result in additional revenue.

Finally, it applies a loss per passenger mile criterion to the 403(d) trains, which I think is important, so that if 403(d) trains fail the criterion we can take them off. Otherwise, we are frozen into operating those trains forever. Those are the main provisions, Mr. Chairman.

RECONCILIATION PROVISIONS AND COST SAVINGS

Mr. LEHMAN. Mr. Claytor, please provide for the record a detailed summary of the Amtrak provisions in the House-passed reconciliation bill along with the estimated cost savings for fiscal year 1987 and fiscal year 1988.

[The information follows:]

Summary of Amtrak Reauthorizing Provisions:

- Authorization Levels - Authorizes $600 million in FY 1986; $606.1 million in FY 1987; and $630.3 million in FY 1988.

- Auto Ferry - Extends Amtrak's authority for operation of auto-ferry service to transportation of used automobiles regardless of whether those automobiles are accompanied by their owners.

- Basis of Capital Assets - Amend Section 304(c), which in 1981 was amended to require the issuance of preferred stock to the Secretary of Transportation for capital grants dating from Amtrak's inception, to allow the Corporation to restate its books and tax returns prior to fiscal year 1982 as if preferred stock had actually been issued in those years.

- Board of Directors - Amend Section 303(a) (1) (E) to allow the two board members elected annually by the preferred stockholder of the Corporation to serve until their successors are appointed.

- Charter Trains - Amend Section 402(g) to eliminate the requirement that Amtrak enter into an industry-wide agreement to operate charter and special trains.

- Diversity Jurisdiction - Amend Section 306(m) to clarify that, for purposes of determining original jurisdiction in federal district courts, Amtrak shall be deemed a citizen only of the District of Columbia.

- Employment Vacancy Filing - Imposes a penalty of $500 per vacancy against any railroad that fails to file vacancy notices with the Railroad Retirement Board. An exemption is provided for Amtrak in connection with the takeover of train and engine crews.

- Federal Employee Travel - Amends Section 306(f) to permit Amtrak to participate in the contract air program, administered by the General Services Administration and currently restricted to airlines, as a "preferred carrier" for federal employee travel in markets where Amtrak service is competitive with that of air carriers.

- Section 403(d) Commuter Trains - Requires "sunset" commuter trains to meet the financial criterion for short-distance trains of 14.9 cents (inflated to FY 1987 dollars) short-term avoidable loss per passenger mile. These trains would no longer be subject to the passenger mile/per train mile criterion. If a train does not meet the financial criterion, Amtrak may discontinue the train unless state or states involved enter into an agreement which ensures that the criterion is met.

- GAO Audits - Amend Section 805(2) (A) to eliminate the requirement that the General Accounting Office perform an annual audit of Amtrak and to make such audits discretionary.

- Labor Protection - Includes a provision to make clear that Amtrak has the flexibility to make frequency adjustments without incurring labor protection costs.

- Labor-related Cost Savings - Requires Amtrak and its unions to negotiate changes in labor agreements that will result in significant cost savings and to report to Congress within six months of enactment.

- Northeast Corridor Cost Allocation - Modifies the cost allocation criteria to be used by the Interstate Commerce Commission in order that it may determine, in a more equitable fashion, the amount of compensation paid to Amtrak by the freight railroads for use of the Northeast Corridor.

- Northeast Corridor Improvement Project Report - Repeal Section 703(1) (d) of the Railroad Revitalization and Regulatory Reform Act of 1976, which requires Amtrak, jointly with the Secretary of Transportation, to submit an annual report on the progress of NECIP.

- Performance Criteria - Amends Section 404(d) to delete reference to PM/TM as a performance criterion since it reveals little about the cost effectiveness and efficiency of a route.

- Performance Evaluation Center - Amend Sections 305(l) and 305(m) to delete the requirement for maintaining an internal Performance Evaluation Center and for submitting biannual reports.

- Reports - Amend Section 308(a) to allow Amtrak to consolidate and replace current monthly reports to Congress with a single annual report, due on February 15, to include route-by-route performance data incorporating measures used by Amtrak management.

- Revenue to Cost Ratio - Sets a goal for Amtrak to meet a revenue to cost ratio of 61 percent beginning in FY 1986.

- Route and Service Criteria - Amend Section 404(c) to eliminate the now unconstitutional one-house veto of proposed amendments to the Route and Service Criteria and Procedures and to give Congress 120 days to act on the proposals.

- Route Discontinuances - Prohibits Amtrak from reducing frequency of service on any route on which, as of May 1, 1985, three or fewer trains operated per week unless the service fails the criteria.

- Eliminates Several Obsolete Provisions.

It is estimated that this legislation will reduce our funding needs by approximately $30 million in FY 1987.

AUTO TRAIN

Mr. **Lehman**. With regard to the Auto Train are you anticipating, or are there actually, auto rental cars moving northbound out of South Florida in April?

Mr. **Claytor**. That is right. It is northbound in the spring and southbound in the fall.

Mr. **Lehman**. For auto rentals?

Mr. **Claytor**. Yes. For the rental cars.

Mr. **Lehman**. They bring new rentals down in the fall and they take used rentals back in the spring?

Mr. **Claytor**. That is correct.

Mr. **Lehman**. And you are looking at that possibility for the Auto Train?

Mr. **Claytor**. Several of them have expressed great interest in having us transport these cars for them. Otherwise, their resources to do that are fairly limited, without a considerable expense.

Mr. **Lehman**. I have a son in the car business and he is going to be facing that excess merchandise problem.

Mr. **Claytor**. Yes, sir.

FRA'S AMTRAK BUDGET REQUEST

Mr. **Lehman**. Mr. Riley, would you walk us through your Amtrak budget request for fiscal year 1987? How much did you request in your submission to OST; and how much did the Secretary request of OMB?

Mr. **Riley**. The Secretary originally had proposed what amounted to a two-year phaseout of Amtrak subsidies, with $400 million in this fiscal year, and $200 million in the following year. However, it is important to bear in mind that that was prior to Gramm-Rudman-Hollings, and after the passage of Gramm-Rudman-Hollings it became fairly clear that those funding levels were no longer tenable.

In addition to that, I must add that as Graham indicated previously, Amtrak's chance of operating at all at a $400 million level is very scant, in fact virtually non-existent without major systemic changes. If you are going to produce a phase-out level that results in the immediate termination of the company, it is certainly far better from the taxpayer's perspective to do that at zero than to do it at $400 million which simply amounts to a grant to pay some creditors.

We had submitted two alternate budgets to OST, one embodying a figure of $616 million for FY 1987, which would be essentially a straight-line figure, and the other embodying a zero number which reflected the policy judgments of last year.

And again I have to emphasize that the $400 million number would on reflection—and this is why we certainly support the position the administration is taking on this—the $400 million figure would not have run the company as it is presently being run and it simply would have been an out and out loss to the taxpayer.

Mr. **Coughlin**. But you did submit a $616 million request for FY 1987?

Mr. **Riley**. We submitted alternate assumptions, saying to run the company as it is now constructed, without changes in rules, would cost $616 million for FY 1987, and then we submitted an alternate budget at zero. We submitted two projections. One at zero and one at $616 million.

Mr. COUGHLIN. But the $616 million was what your estimate was of what it would take to run the company——

Mr. RILEY. There was a capital element in it. That is not just an operating number. There is some capital in there.

I do not think there is very much disagreement between Amtrak's position, and ours, on the actual dollar outlays involved in running the company.

It also assumed that no changes were made in work rules, no changes were made in any operating practices from a year ago. It essentially, you know, was a freeze of Amtrak's FY 1985 operations, across the line.

Mr. COUGHLIN. But no efficiencies were——

Mr. RILEY. Yes, we assumed no efficiencies with that number. What we wanted to do with the two budgets was just to illustrate the two different scenarios that one could play out.

One is what it would cost to straight-line Amtrak on all assumptions, and then secondly, the continuation of the no-funding recommendation.

DOT'S AMTRAK BUDGET REQUEST

Mr. COUGHLIN. And then the Secretary submitted to OMB a $400 million level?

Mr. RILEY. It was essentially a two year, or a three year, depending on how you want to look at it, phaseout proposal. $400 million for fiscal year 1987; $200 million for the next fiscal year, followed by a zero number; but again, that would not have been a phase-out since the company could not operate at $400 million without major system changes.

So it would essentially have been a $400 million grant to creditors without running the company.

Mr. COUGHLIN. And you are convinced that $400 million would result in the collapse of the company?

Mr. RILEY. Without major—Graham, I would yield to you on that.

Mr. CLAYTOR. I would agree.

Mr. COUGHLIN. I mean, I was asking your opinion.

Mr. RILEY. Well, I think I made the point this morning, that if you had absolute fiat and could make a lot of changes, that I think Graham and I both agree would be very difficult to make, you might be able to knock a couple of hundred million dollars off the subsidy, maybe, and that is very conjectural.

I think the way the company is presently structured, it could not operate at $400 million, so that appropriation would simply have been a $400 million grant to creditors.

And it would not have run the company, and we really felt that there was no public purpose served by allocating tax dollars that way.

Mr. COUGHLIN. Thank you, Mr. Chairman.

FRA BUDGET ASSUMPTIONS FOR AMTRAK

Mr. LEHMAN. Mr. Riley, how did you arrive at the fiscal year 1987 Amtrak figure that was in your budget request to the Secretary?

[The information follows:]

Actually, I provided the Secretary with two requests. One of $616 million assumed a continuation of the present system and a modest allowance for essential capital. The other requested no funds for Amtrak. Below $500 million and absent major systemic changes, Amtrak would be unable to operate.

MINIMUM FUNDING REQUIREMENT

Mr. LEHMAN. Mr. Riley, what is your estimate of the bare minimum it would take to run the current Amtrak system in fiscal year 1987?

[The information follows:]

I agree with Graham Claytor that it will require a subsidy of about $600 million to operate the current system in FY 1987. There are, however, a number of ways to reduce that number. We are currently reviewing these measures with Amtrak.

Mr. LEHMAN. Mr. Riley, please expand on your answer for the record and provide as much supporting data as possible.

[The information follows:]

We believe that a number of cost cutting actions are feasible, including consolidating selected trains and facilities, streamlining train crews, reducing support and overhead functions and charging higher fares for certain services. We are currently refining our estimates of possible savings prior to discussions with Amtrak.

AMTRAK BUDGET REQUEST

Mr. LEHMAN. Mr. Claytor, what is the bare minimum you would require to operate your system in fiscal year 1987?

Mr. CLAYTOR. Taking the same approach we did last year, when we said, I thought I could get by with a 10 percent reduction, I would say the amount that has been authorized in the reconciliation act of $606 million is what we will require for operations.

We will also need, either from internally generated funds, or otherwise, about $30 million or more of capital, as a minimum; but the operation grant, minimum, that we could get by on, is about $606 million.

Now we are getting by this year with $592 million, and one of the problems is going to be, that some of the things we have done to meet that level of funding in the way of reducing frequency of maintenance cycles, has got to be reversed next year. We cannot continue to do that.

So in other words, we are getting ourselves in a little bit of a ditch already, with deferred maintenance, which we cannot keep up. We are going to have to pick that up again next year.

So I think $606 million is a realistic figure for FY 87.

Mr. LEHMAN. Does $605 million mean you would have to go into bankruptcy?

Mr. CLAYTOR. No, no.

Mr. LEHMAN. I am trying to hit the tipping point.

Mr. CLAYTOR. Yes. I picked 606 because that is the authorization figure; if you made it 605, we will manage to get by with that percentage reduction.

But if you start saying, could I do it with 575, then we begin to fall off the table.

Mr. LEHMAN. In other words, anything much below $600 million would really be a threat to your existence?

Mr. CLAYTOR. That is right. We, for instance, extended the cycle on maintenance of locomotives from 800,000 miles for a major overhaul to a million, which is more than the manufacturer recommended, and as a result of that, we are already finding more failures on the road.

It is not a safety problem but it is an awful mess; when a locomotive breaks down you have to go rescue it, and it costs a lot of money.

And we have got to go back to the 800,000 mile cycle, and we have done the same thing with some of our passenger cars. We have extended that.

Now we are finding lots of complaints, and lots of difficulties as a result, and I think we are going to have to go back and do that faster.

We knew this; I mean, it is an old story. Deferred maintenance you can live with for a while, but it gets rapidly worse, and you have got to make it up once you do it.

DEFERRED MAINTENANCE

Mr. COUGHLIN. Mr. Chairman, I must say I have already experienced deferred maintenance. Four hundred yards out of Union Station an engine went down.

Mr. CLAYTOR. Yes. It has done that and we are trying to put a stop to it, but you have got to keep these cycles going, and we are going to try to come back to the full maintenance cycle just as fast as we can.

Mr. RILEY. If I could add just one comment on that. This is a graphic illustration of the point I was seeking to make yesterday, when I criticized the Morgan Stanley plan for cutting Conrail's maintenance by 21 percent.

I do not want to get back into that topic but this is precisely what I was talking about.

Mr. COUGHLIN. In your review of Amtrak, and Mr. Claytor's proposal, do you concur with deferred maintenance or do you think that we should not be doing that?

Mr. RILEY. I think that Amtrak cannot continue, indefinitely with a zero capital budget, or a very small capital budget.

It is going to become more costly to provide services that are provided today, if Amtrak cannot maintain a minimum capital investment schedule.

Mr. COUGHLIN. Would you agree with Mr. Claytor's views on deferred maintenance, Mr. Riley?

Mr. RILEY. Well, the safety aspects of deferred maintenance are a little different for Amtrak than they are for some other carriers.

There is a safety implication to deferred maintenance but you feel a service loss before you get to that.

I think it is conceivable that over time, Amtrak could be forced to scale down its operating speeds in the Northeast Corridor if they could not afford to maintain maintenance standards that are consistent with our track speed regulations.

I mean, we go out and look at safety in the abstract. We do not key it to any other factor. And when track or equipment falls out of synch, we put it on the sideline, and perhaps that could happen to Amtrak at some point.

But I think a passenger carrier in a competitive environment would probably lose its business, and go out of business before it hit a critical safety point.

Graham, you may——

Mr. **Claytor**. Oh, absolutely. We are not, regardless of how little money you give us, we are not going to compromise on passenger safety, but that may mean we quit running some trains. It may mean that we slow them all down. It may mean that we lose all of our business, as he said; but we are not going to compromise on passenger safety.

Mr. **Coughlin**. Thank you, Mr. Chairman.

TAX-EXEMPT BONDS

Mr. **Lehman**. Mr. Claytor, Amtrak is pursuing legislation to finance capital improvements by means of selling tax-exempt bonds.

Would you briefly explain this proposal, and tell us how these bonds would be secured, how much you could raise, how much of your annual revenue would have to be dedicated to pay off these bonds, and whether you would expect these bonds to be guaranteed in any manner by the federal government?

Mr. **Claytor**. Well, the answer to the last part of the question is clearly no. These are not general obligation bonds; these would be revenue bonds, and they would be issued by Amtrak but secured by the pledge of fixed revenues from outside sources, i.e., the lease of our right-of-way for fiber optics communications.

A number of major real estate development leases that we have, or, in the case of a new project, if we put together a major co-generation plant, for instance, which is one that we have been talking about in Philadelphia with the University of Pennsylvania.

We could probably finance these bonds on the basis of a pledge of the revenues that would be generated by the plant, and that is the way this would work. Now, we have the right to issue those bonds now, not tax-free bonds, but bonds, anyway.

Any bonds issued, including bonds that would be issued under this provision, would have to be approved by the Secretary of Transportation under existing law, and that would not be changed.

But what this would do would say, if we can issue this type of revenue bonds, they would be tax-free. That would mean we would have a much better interest rate arrangement.

And we think it is fair because our competition has been doing this with billions and billions of dollars for the last 50 years with airports, and all kinds of things like that.

Practically all the airports in the country are financed by tax-free revenue bonds, and that savings is passed on to the airlines, resulting in lower air fares.

So I think it is only fair that Amtrak be given this opportunity. Now we do not anticipate any immediate issuance of any such bonds, but our forecast really is that—I think this is fair—that by the year 2000, I think we will have on the order of $100 million a year, in revenue, of the type that could be used to finance revenue bonds.

It will be a good deal less than that, say, by 1990. But with that, what we could then do is to take that revenue, and if we need to have a major capital expenditure, such as a large purchase of locomotives, or cars, we then can use that revenue that we know is going to come in, and get the capital to buy the locomotives and cars, and pay it back with the savings.

So that the revenue of course has got to be high enough, not only to pay interest, but to amortize the bonds.

Mr. **Lehman**. All of them would not come due the same time because you have to amortize them over a period of time.

Mr. **Claytor**. Yes. Well, generally speaking, revenue bonds arrange for an amortization fund that amortizes them over the whole period of the life of the bonds.

Mr. **Lehman**. For the record, could you set up some kind of an amortization schedule if this took place? Wouldn't it be important to know how much of your income would be devoted to these bonds?

Mr. **Claytor**. Well, I cannot answer that because it will depend on what we need and how much revenue we have, but it would be entirely what we call corporate enhancement revenue, not transportation revenue.

You see, we have got some major real estate developments that I think have tremendous promise, but are not going to bring in a lot of money in the near future, but I think that by the year 2000, we can be getting very substantial funds from that, and to be able to take those funds and capitalize them for large expenditures, particularly with the interest rate break that this will give us, which would be a great help.

We would not have to ask for any capital funds from appropriated funds at all, after, say, 1990. I think we can be capital sufficient, and that is what I am trying to do.

Mr. **Lehman**. Well, that is a side benefit of Amtrak.

Mr. **Claytor**. Yes.

Mr. **Lehman**. Mr. Riley, do you want to comment on possible federal support for this kind of proposal?

Mr. **Riley**. Mr. Chairman, I have just been briefed on it and I am really not in a position to give you a reaction. I need to study it and then discuss it with Treasury, and others within the administration.

Mr. **Lehman**. Mr. Coughlin.

30TH STREET STATION

Mr. **Coughlin**. Thank you, Mr. Chairman. Before I turn to the Atlantic City line, let me just ask about 30th Street Station.

I know there have been some proposals. That is a pretty valuable piece of real estate that you have up there, and I know there have been some proposals to lease or develop the air rights. Can you tell me the status?

Mr. **Claytor**. Well, we are working with a major developer who has a large Philadelphia partner, a Philadelphia plus a Texas group, who are going to spend a year—they have been at it now I guess for four to five months—studying the project, without commitment by us to go forward with them, but in order to present us a development proposal.

And at the end of that year we will know where we are. How soon they can really start on actual construction of the first part of that is going to depend, I think, on the results of this study, but we are working with them very closely on this.

There is no question that that is going to be a major development. The only question is how soon.

Mr. **Coughlin**. Could that result in considerable revenues to Amtrak?

Mr. **Claytor**. It certainly will result in revenues to Amtrak, but I doubt if that will produce revenues to Amtrak for at least 10 years, or maybe more.

Mr. **Coughlin**. You think it is that far down the line to produce any significant amount of revenue?

Mr. **Claytor**. For significant revenue, yes, I do.

ATLANTIC CITY LINE

Mr. **Coughlin**. Could you update us, Mr. Riley, on the Atlantic City project. Has the Secretary made the necessary certification regarding local match?

Mr. **Riley**. The Secretary made the certification on October 23rd, and as you recall, the requirement is that the Secretary certify when at least 40 percent of the project's funding would come from non-Federal sources. At that point we had a $75 million project and the Federal contribution was limited to $30 million, and under the terms of the statute we had no alternative but to certify.

ATLANTIC CITY LINE CERTIFICATION

Mr. **Coughlin**. Mr. Riley, please provide for the record a copy of the Secretary's Atlantic City certification.

[The information follows:]

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

OCT 23 1985

Mr. W. Graham Claytor, Jr.
President
National Railroad Passenger Corporation
400 North Capitol Street, N.W.
Washington, D.C. 20001

Dear Graham:

This is in response to your letter of October 23, 1985 along with Secretary Bodman of the New Jersey Department of Transportation requesting my certification that the requirement of the 1984 and 1985 Department of Transportation and Related Agencies Appropriation Acts (Pub. L. Nos. 98-78 and 98-473) relating to non-federal funding contributions for the Atlantic City to Philadelphia rail passenger service restoration project (Project) has been met.

I have reviewed Amtrak's Financing Agreement (Agreement) with the New Jersey Transit Corporation dated October 23, 1985 and the resolution by the New Jersey Transit Corporation's Board of Directors dated May 1, 1985. On the basis of these documents, I certify that not less than 40 per cent of the costs to restore intercity rail passenger service between Atlantic City, New Jersey and the mainline of the Northeast Corridor will be derived from non-federal sources. Since my certification is based on the terms of the October 23 Agreement, any changes to the Agreement which alter the scope of the Project or the funding responsibilities of the parties must be approved in advance by the Department.

My certification is based on the representations by Amtrak that the maximum amount of Northeast Corridor Improvement Project funds to be expended on this Project will total $30 million inclusive of all project management costs and that, to the extent that Amtrak corporate funds are used to cover program FELA liability costs, these corporate funds shall be considered Federal funds for the purpose of computing the maximum 60 percent federal financial contribution to the project.

I would also like to draw your attention to the fact that my certification is based on the estimate contained in the October 23 Agreement that the cost of the intercity passenger portion of this Project is $75 million and that it is the agreement of the parties that New Jersey Transit will pay for all costs in excess of $30 million (with Amtrak assumption of FELA costs). My certification does not carry with it any implication that the Department would support Amtrak in seeking more capital funds in the future for this project. Nor does it constitute an expression of the Department's approval or disapproval of any other proposals regarding freight or passenger service on this line.

With best wishes.

Sincerely,

Elizabeth H. Dole

Elizabeth Hanford Dole

ATLANTIC CITY COSTS, FUNDING, AND IMPLEMENTATION

Mr. COUGHLIN. Mr. Riley, would you provide for the record a breakdown of total Atlantic City project costs, funding sources, and implementation schedule?

[The information follows:]

The following breakdown of total Atlantic City intercity rail project costs and proposed funding sources reflect the project budget agreed to by Amtrak and New Jersey Transit on March 14, 1986. Amtrak's schedule for this project envisions start of construction during the spring of 1986 with project completion 36 months later.

Atlantic City Line capital cost estimates and funding sources

[In millions of dollars]

Project activity:	*Estimated cost*
Intercity project:	
Track (60.6 miles)	$23.5
Bridges	9.6
Communication and signals	12.7
Loop track	.5
Grade crossings	5.0
Fencing (14.2 miles)	3.2
AC terminal	14.5
Miscellaneous and contingencies	6.0
Total	75.0
Proposed funding sources: Intercity project:	
FRA/Amtrak	30.0
NJ Transit	[1] 45.0
Total	75.0

[1] Atlantic County Improvement Authority has agreed with NJ Transit that ACIA will finance the construction of the Atlantic City Terminal which accounts for $15.0 million ($14.5 million for construction and $0.5 for miscellaneous and contingencies).

ATLANTIC CITY COMPLETION SCHEDULE

Mr. COUGHLIN. Mr. Claytor, when do you now estimate that the Atlantic City project will be completed and you can start running service in this corridor?

Mr. CLAYTOR. Well, we believe we have a contract with the New Jersey Transit on this, that is just about——

Mr. COUGHLIN. What do you mean, we?

Mr. CLAYTOR. We, Amtrak.

Mr. COUGHLIN. You have one or you——

Mr. CLAYTOR. No, we have a contract. We think it will be able to be executed within the next two or three days. That is my hope.

Assuming that that contract is executed, we would start work on April 1st, the beginning of the construction season, really.

And it will then take three years before full service is taking place on the line. The principal delay is in the signal system.

Your signal and centralized traffic control system is always a very long lead item, and until the project is signed, sealed and delivered, we cannot place a firm order for that.

We will place firm orders for that signal equipment right away but its manufacture and installation will probably be the critical path in the construction.

Mr. COUGHLIN. And you feel confident that it can be operated on a contribution to overhead basis?

Mr. CLAYTOR. Yes.

Mr. COUGHLIN. Mr. Riley, does it make sense in your view to spend federal dollars to rehabilitate the Atlantic City line when you are proposing to eliminate all Amtrak funding?

Mr. RILEY. I have to say that in my judgment it makes absolutely no sense and that is why we recommended the deferral of this last year.

Even against the limited funding that was given to Amtrak in the past, in my judgment it made absolutely no sense to put $30 million into rehabilitating this line when Amtrak was being starved for maintenance dollars across the rest of their system.

However, once the deferral was rejected, our legal wiggle room was very small. The Secretary was told to certify when the plan incorporated a contribution limited to 40 percent.

By the end of October we had reached the point where it did and thus we went ahead and made our certification.

1985 SAFETY RECORD

Mr. COUGHLIN. We will turn to safety. Mr. Riley, we discussed the rail industry's safety record yesterday.

Would you expand upon that conversation and tell us how Amtrak's safety record compared to those of other railroads in 1985, and whether you find Amtrak's safety record to be satisfactory?

Mr. RILEY. As I mentioned yesterday, of the 13 largest carriers in the country, Amtrak had the lowest accident per million train miles ratio last year, 2.14. So of the major railroads in the country, Amtrak was literally by that measure, the safest railroad in the country.

I have to add, however, that in employee safety records, workplace injuries, Amtrak's record was not as impressive. They were 12th out of the 13 large railroads in that category.

But as to safety measured in the sense that we normally refer to railroad safety Amtrak was the nation's safest large carrier.

In terms of OSHA, workplace type environment issues, Amtrak's record was not as good.

PASSENGER INJURIES AND FATALITIES

Mr. COUGHLIN. Can you tell us how many fatalities and serious injuries there were last year in terms of passenger fatalities, or serious injuries?

Mr. RILEY. I will have to submit that for the record. I do not have all of the numbers in front of me for that. I will have to submit that for the record.

Mr. COUGHLIN. If you could, please.

[The information follows:]

In 1985 Amtrak had 1 passenger fatality and 226 reportable injuries. Totally, the Nation's Passenger Carriers had 3 passenger fatalities and 657 reportable injuries. With regard to OSHA type accidents Amtrak experienced 2 fatalities and 1,703 reportable employee injuries in 1985.

SAFETY IMPROVEMENT RECOMMENDATIONS

Mr. COUGHLIN. Mr. Riley, in what safety areas can Amtrak improve upon in fiscal year 1987, assuming they are still in operation? I guess you mentioned the OSHA——

Mr. RILEY. Yes. We are looking at that workplace environment, and I am not prepared to give you recommendations on that as yet, but there are some I can give you, most of which Amtrak is already on the way to doing.

The Amtrak accidents that took place two years ago, we learned a great deal about survivability within a rail car when that rail car is off the track.

I thought it was remarkable, as a matter of fact. If you saw the pictures of that Vermont accident, to see those rail cars down in the ravine, on top of one another, and to realize that of the more than 300 on board, all but five survived, says a great deal about how survivable a railroad train really is.

However, we also learned that some additional things can be done.

I would like to see a better luggage restraint system designed into new cars, to ensure that if a train does de-rail, the luggage does not become airborne.

And I know that Amtrak is working on that and is working on a retrofit system for existing cars.

I am also aware that Amtrak, as it is doing maintenance on its current vehicles, is putting in a locking device to prevent seat rotation and retainer bars over the ovens, to keep the ovens from becoming airborne. And those are steps in the right direction.

That is the type of safety activity we would recommend to Amtrak in the near term.

My other major recommendation to Amtrak would have been on their radio system, and at our last board meeting we approved a CAR to go ahead and begin the purchase of modern, multi-channel radio equipment.

It is very difficult to say anything but good things about Amtrak's safety performance in inter-city carriers. They really do do a good job there.

SURVIVABILITY RECOMMENDATIONS

Mr. COUGHLIN. Should the recommendation on survivability go beyond recommendations to regulations?

Mr. RILEY. We are giving some thought to that. I guess it depends on what we are able to do voluntarily, and then so far, as I have said, Amtrak has begun to implement everything we have recommended, so we could not have had a better working relationship.

My own view is that we have only one inter-city rail passenger carrier in the country and to the extent we can get the improvements made by agreement, we do not have to go through the regulatory process, which consumes not only man-hours but moves with all the speed of a glacier. I think it is better to do it by agreement, if you can.

1985 SAFETY RECORD

Mr. COUGHLIN. Mr. Claytor, are you satisfied with Amtrak's 1985 safety record and in what areas do you plan to improve upon next year?

Mr. CLAYTOR. Yes. I am satisfied with our 1985 safety record as far as the trains and passengers are concerned, and I hope we can keep it. We had no fatalities last year and I hope not to have any in the foreseeable future.

I am not satisfied with the employee safety, and I have not been at all since I have been here.

I started three years ago a major safety campaign. We now have safety committees in all of our shops, and in our maintenance forces, that consist of not only management personnel, but union personnel, too.

The unions have been very cooperative on this; they always are. You cannot get safety on a railroad unless you have real dedication to the job from everybody from the board room to the brakemen, and all in between.

It is a top to bottom operation. If top management indicates it does not really care much about safety, safety will go to hell.

If management says we have got to be safe but does not do anything to get the worker really involved, it will go to hell, too. And we are trying to do the whole thing. I have said it is my goal that we are going to win the Harriman gold medal award for the safest railroad in the country on employee operation.

We are 12th out of 13th so we have got a way to go. I might add that when I was with Southern in the 1960's, we were 13th I think out of 13 or 13 out of 15, and we won the Harriman gold medal award about five times in the later years of the 1970's, and I think we can do it, and we are determined to try.

WEATHER ALERT PROCEDURES

Mr. COUGHLIN. Mr. Riley, as you know, the Committee expressed concern last year about Amtrak's weather-alert procedures.

There have been several tragic accidents over the past two years caused by sudden track washouts and other problems brought about by local thunderstorms and the like.

We asked the FRA to do a comprehensive survey of the weather-alert procedures now in effect on Amtrak routes to identify and correct any deficiencies. We have yet to receive that report.

What did your survey find? What deficiences exist in the current system?

Mr. RILEY. Let me summarize that for you. Let me tell you that the reason you have not received the report is me. The report hit my desk and while it was substantively sound, I thought it was poorly written, and I wanted to present a better product to Congress, so I sent it back for a stylistic rewrite.

As a matter of fact I used the lunch hour today to work on that. But I can tell you what came out of it in a general sense and we will have the final report up to you within a matter of days.

We found that generally Amtrak and I want to emphasize both the scope and the limitations of this statement—that generally, Amtrak's weather notification procedures were sound, although they differ from area to area with changes in geography, and with changes in the different carrier that they work with. Because Amtrak is somewhat dependent upon the procedures used by the contracting carriers.

Now we are going to make a number of recommendations in the report, some of which we have already begun to implement.

We have identified several specific geographic areas where the existing early information system has got to be supplemented by the implementation of some additional material, physical changes, and we have made specific recommendations on that.

There are gaps in the system. There are areas in the system where more monitoring equipment should be installed and our recommendations on that are specific. In addition, Amtrak of course always has the inherent problem of having to coordinate operations with many carriers with which it contracts for the use of equipment, crews and track, and we believe that despite the fact that those carriers may not suffer any inconvenience in their freight operations by using different systems, those differences do inconvenience Amtrak because they essentially require you to train people on three or four different systems.

We believe there has to be uniformity and we have already contacted a number of contracting railroads to back up Amtrak's work in that regard.

But I expect to have this report up to you shortly. Substantively it is done.

One thing that always bothered me when I worked as an aide in the Senate was the poor quality of writing you tend to get from the bureaucracy and I really think that the bureaucracy ought to demonstrate that it can speak in basically sound English, and so we are doing it with that in mind.

Mr. COUGHLIN. Mr. Claytor, as Mr. Riley suggested, you do have to depend on the railroads that you contract with to provide accurate and up-to-date weather information. I imagine some railroads do a better job than others.

Do you, in fact, have problems in gaining adequate cooperation with some of your contract railroads in this area? If so, which ones?

Mr. CLAYTOR. When we first started the program, there were two or three railroads that did not follow our recommendations about getting weather-alert systems in their dispatcher's offices, for instance, which we felt everyone should do.

We called that to their attention. I went to the President in one or two cases and they all did it.

We are having very good cooperation from the railroads now and I have no complaints. I agree with Mr. Riley that more uniformity would be helpful, but that is not something that Amtrak is in a position to handle. I think the FRA is and we back them altogether on that.

But an example of what we have been doing is the recent floods in California, the most devastating floods that have occurred anywhere in the country I guess for many years.

San Francisco, for about four days, had no surface transportation by highway or rail, north, east or south, and masses of railroad tracks were washed away.

There was not a single accident. We had a train marooned with a flood washout behind it and a washout in front of it, and so it took a while to get the passengers back to civilization. But no injuries and no derailments. The railroads really saw it coming and took the necessary action, and I think that was an indication that we have got the thing working reasonably well.

WEATHER-ALERT STANDARDS

Mr. **Coughlin**. Mr. Riley, are there any existing regulatory standards in the weather-alert area? If not, is there a need for such standards?

Mr. **Riley**. There are not any at the moment. I would prefer to address this issue by having the AAR accept a standard and that is what we are working on. If we have to regulate it, we will; but again, this is an area that ought to be done by common consent, because it is a clear safety exposure and it is something we can all reach out and touch.

I think that Vermont accident did a lot of good in this regard. There is no good in an accident but you have to try to draw good out of it.

Curiously, I think, in the end, we all agreed after that accident, that it was an unavoidable accident, that even the best inspection—and NTSB I think agreed with us—would not have discovered the beaver dams that broke.

However, that accident sensitized everyone to the need for weather early warning systems, and a lot of progress has been made over the last year.

But I feel very strongly there has got to be a uniform system because trains do interchange between carriers, and if we cannot get that done by agreement, we are going to regulate it.

Mr. **Coughlin**. Do you agree, Mr. Claytor?

Mr. **Claytor**. Yes, sir.

Mr. **Coughlin**. That concludes the general questions, and John, thank you. There is not any need for you to stay through the rest of the hearing, but if you would like to, we will certainly welcome you.

Mr. **Riley**. It is hard to leave when you are having this much fun, but I think I am going to go back anyway.

Mr. **Coughlin**. You might like to get back to work.

Mr. **Riley**. Thank you very much. We do an awful lot of hearings but I am not insincere when I tell this committee that it is a pleasure to be here because this is a good, thorough, professional job, and really, we learn a lot in the course of preparation for this hearing about our own operations. Thank you.

Mr. **Coughlin**. Thank you very much for being here. Graham, we will recess for a few minutes, while we go over and vote.

(Whereupon, a short recess was taken.)

QUESTIONS SUBMITTED BY HON. SILVIO O. CONTE

Mr. **Coughlin**. Mr. Conte was not able to be here today, but he has some questions which he would like you to answer for the record.

EFFECT OF BUDGET REQUEST ON MORALE

Mr. **Conte**. Mr. Claytor, the repeated efforts of the Administration to eliminate funding for Amtrak must have an effect on employee morale. Could you comment on that problem, and indicate what could be done, other than prohibiting the submission of these zero budget requests, to improve the situation?

[The information follows:]

There is no question that the proposals to eliminate Amtrak have had an impact on the morale of our employees. The last thing you need in a service industry is for the people who deal with the public to feel poorly about the prospects of keeping their job. There is very little Amtrak can do about these proposals other than to demonstrate that Amtrak is deserving of federal support by continuing to improve service while reducing costs. Another alternative, of course, would be to establish some type of permanent funding mechanism that would assure Amtrak's continued existence. Some have advocated that, like transit, Amtrak should be included in any gas tax proposal that would increase revenues for the Highway Trust Fund. That is a policy decision, however, that Congress will have to make as it determines what course our National Transportation Policy should take.

PUB CAR

Mr. Conte. I was pleased to see the introduction of new "Pub Car" service on the Montrealer. I know it has only been operating for a few weeks, but do you have any impression of the response to the service?

And how has ridership been on that route this year?

[The information follows:]

It is much too soon to assess the impact of our new "Le Pub Car." For the few days for which we have revenue figures, however, revenue was up 7 percent over last year. More significantly, passenger comments on this new service have been highly favorable.

LABOR AGREEMENT

Mr. Conte. You recently concluded a labor agreement relative to the issue of using all-Amtrak crews on certain trains.

Could you outline that agreement, and indicate how much money will be saved as a result?

[The information follows:]

TRAIN AND ENGINE CREW TAKEOVER

On December 23, 1985, and January 29, 1986 Amtrak concluded agreements with the Brotherhood of Locomotive Engineers and the United Transportation Union, respectively, for Amtrak's takeover of train and engine crews outside the Northeast Corridor. The agreements provide for:

Hourly rate of pay instead of the mileage basis of pay with time and one-half for working over eight hours a day.

Crew composition to be consistent with the size of the train.

Greater flexibility in use of operating crews to perform rail yard functions in connection with their own trains.

Extended runs (fewer crew changes).

No firemen on designated short runs and elimination, by attrition, of all firemen on runs with a scheduled running time of less than 4 hours.

Five-year step from rate of entry wage scale for new hires.

When fully implemented, the agreement will provide a savings of between $20 and $30 million annually, provided the current route structure is not changed. We plan to implement the takeover over an 18-month to two-year period.

FRA FUNDING REQUEST FOR AMTRAK

Mr. Conte. Mr. Riley, your original request to the Office of the Secretary was for approximately $600 million for Amtrak, an amount that the Secretary reduced to $400 million for budgetary reasons, and OMB then eliminated completely.

Can we assume that your original $600 million request represents an accurate assessment of Amtrak's need for Federal funding?

[The information follows:]

Yes.

PRODUCTIVITY IMPROVEMENTS

Mr. CONTE. Mr. Claytor, in your opening statement, you talked about continued efforts to improve productivity and reduce costs. Could you elaborate on your efforts in this area?

[The information follows:].

The most significant areas of future improvements are naturally related to Amtrak's takeover of train and engine crew operations from the contract railroads and expanded use of part time employment throughout our station and reservation facilities. Additional improvement will come from continued efforts to streamline levels of supervision. consolidation of various support functions such as our reservation functions and increased use of our automated system capabilities.

BUDGET RECONCILIATION BILL

Mr. CONTE. There are several items of particular interest to Amtrak in the Reconciliation conference report, including a three-year authorization at responsible funding levels.

Would you comment on those provisions of Reconciliation that are of particular importance to Amtrak, and indicate their impact on Amtrak operations and finances?

[The information follows:]

Enactment of the Reconciliation bill is critical to Amtrak. There are several items which are of considerable importance. The one involving the most money, of course, is additional compensation for the operation of freight trains over the Northeast Corridor. This should save Amtrak between $20 and $30 million a year depending on the volume of freight.

The second most important provision is a clarification of law which states that Amtrak is not liable for labor protection payments for frequency adjustments of seasonal modifications.

This legislation also amends existing law to require "sunset" commuter trains to meet the financial criterion for short distance trains. These trains would no longer be subject to the ridership criteria (PM/TM). If a train fails the cost criteria we can take it off.

Another provision of the bill permits Amtrak to participate in the contract air program administered by General Services Administration which is currently restricted to airlines, as a "preferred carrier" for federal employee travel in markets where Amtrak service is competitive with that of air carriers.

Finally, the Reconciliation bill extends Amtrak's authority for operation of Autoferry service to transportation of used automobiles regardless of whether those automobiles are accompanied by their owners. There are other provisions in the bill that impact Amtrak but these are the principal ones.

CUSTOMS AND IMMIGRATION INSPECTIONS

Mr. CONTE. I understand that Amtrak has encountered difficultites with timely customs and immigration inspections, especially at the Canadian border. Would you outline those problems? What needs to be done to solve them?

[The information follows:]

There are four Amtrak routes which cross the Canadian border: Chicago-Toronto via Port Huron, Michigan; New York-Toronto via Niagara Falls, New York; New York-Montreal via Rouses Point, New York; and Washington-New York-Montreal via St. Albans, Vermont. Amtrak trains entering the U.S. from Canada are often subject to delay as a result of U.S. Customs and Immigration inspections. When there is a delay, it is more apt to be caused by Immigration inspections than by Customs inspections.

At St. Albans, Immigration and Customs used to supply multiple agents depending on each day's passenger count. Since March 1, Immigration has been using only one agent per day. The average daily delay is 20"—30" and has been considerably longer on occasion.

At Niagara Falls, Immigration now supplies only one agent on Sundays and holidays. These days, of course, are when the highest passenger counts occur. Average daily delay of 20"—30". Significant Sunday delays are expected this summer.

At Port Huron, an average delay of 15" is experienced two or three times per week. So far, Customs and Immigrations have both been sending multiple agents depending on passenger volumes. Sunday, the peak of operation, is most likely to experience delays.

At Rouses Point, our recent experience has been much improved due to the special cooperation of both Customs and Immigration officers. It is Amtrak's hope that this situation will continue during the upcoming peak summer period.

The significant reduction in delays at Rouses Point is directly related to the staffing levels and inspection services offered by both agencies. This same level of cooperation at the other border crossing points would greatly improve Amtrak's services. Reduced delays would assist Amtrak in meeting its congressionally-mandated goal to improve on-time performance.

Section 305(i) of the Rail Passenger Service Act directs the Secretary of the Treasury and the Attorney General to establish and maintain en route customs and immigration procedures aboard trains operated in international intercity service at no cost to Amtrak. The best solution to border delays would be for such procedures to be implemented.

AUTO TRAIN

Mr. Conte. Would you bring us up to date on your experience with Auto Train?

What has been the public response to your service, and is it pulling its weight from a profitability standpoint?

[The information follows:]

Auto Train continues to exhibit outstanding performance in ridership and revenue. Passengers more than doubled this fiscal year, with revenue up 94 percent February FY86 year to date. During the same period passenger mile per train mile at 237 improved 138 percent. Recent surveys conducted on-board show that of the passengers who travelled Auto Train, a vast majority rated service features such as courteousness of personnel, reservation system, on-board service, etc. to be excellent.

	Auto train performance (millions) FY85	FY86 1st Qtr.
Short-term avoidable profit (loss)	$4.3	2.8
Long-term avoidable loss profit (loss)	(.5)	1.3

DEFERRED CAPITAL EXPENDITURES

Mr. Conte. One of the consequences of the budget difficulties of recent years has been a forced shrinking of Amtrak's capital program.

What are the long term consequences of deferring capital expenditures, and how much longer can that approach continue before we start running into serious problems?

[The information follows:]

At the funding level contemplated for FY87, Amtrak's capital program finances little more than critical safety programs and various contractual obligations. Programs designed to replace or rebuild aging assets, reduce subsidy requirements, and improve service quality have to be deferred.

Programs that are aimed at reducing Amtrak's subsidy requirements can, of course, be delayed indefinitely. These programs include actions that will increase the efficiency and productivity of our labor force, as well as actions that will enhance Amtrak's revenue generating potential. Deferring programs of this type can be extremely short sighted, however, since the typical investment in this area will produce subsidy reductions many times its original cost.

Programs aimed at replacing aged and deteriorating assets, on the other hand, cannot be delayed indefinitely. The longer they are postponed, the more urgent and costly they become. Likewise, as the assets continue to deteriorate, maintenance costs will begin to accelerate. Depending on the specific program being deferred, additional problems could also surface. Deferrals of right-of-way programs, for example, could result in declining speeds, schedule reliability, ride quality, on-time performance and revenues.

Likewise, if capital programs in subsequent years continued at this austere level, the adequacy of Amtrak's fleet will be affected in two ways. First, as the existing rolling stock, much of which is nearing the end of its useful life, continues to deteriorate, equipment reliability, ride quality and passenger acceptance will begin to decline and, thus, revenues will begin to fall. At the same time, routine maintenance costs will begin to accelerate. Furthermore, equipment availability will begin to decline and, consequently, so will passenger carrying capacity and, therefore, revenues. Second, unless Amtrak's current passenger carrying capacity is increased by acquiring additional rolling stock, Amtrak will not be able to take profitable advantage of the continued growth in the demand for its service.

FEDERAL TRAVEL REGULATIONS

Mr. CONTE. I was surprised to learn that GSA does not encourage, and, in some cases, actually prohibits Federal employees and contractors from using Amtrak.

Could you outline the current status of your relationship with GSA, and indicate what needs to be done to improve that situation?

[The information follows:]

Amtrak is most interested in expanding its share of government employee travel, particularly in the Northeast where we believe our services are highly time/price competitive; however, we have had very little success in garnering more than a small percentage of the market. From 1979 to 1982, Amtrak has been allowed to compete with contract air carriers and had been designated as the preferred carrier between those city pairs where contracts had been awarded, including a number of city pairs in the Northeast. During this period, over 100,000 government employee trips annually were made on our trains. In 1982, GSA made a determination that Amtrak should no longer be allowed to participate in the competitive bidding for preferred carrier status as Amtrak was not an airline and because our relative market share for all government travel was not significant. Subsequently, our market share was drastically reduced, and the preponderance of government travel is now by air. We are concerned by this loss of market share because it is abundantly clear that we are competitive. Amtrak's share of the rail-air market is significant. In fact, of the 24,500 people per day who travel by air or rail among the NEC cities (New York, Newark, Philadelphia, Wilmington, Baltimore, and Washington), Amtrak carries two-thirds of those travellers.

In Amtrak's 1985 legislative program, we recommended an amendment to Section 306(f) of the Rail Passenger Service Act which would have allowed Amtrak to compete directly with the contract air carriers. The pending Consolidated Omnibus Budget Reconciliation Act includes an amendment to Section 306(f) by inserting", which shall include allowing the corporation to participate in the contract air program administered by the General Services Administration in markets where service provided by the Corporation is competitive as to rates and total trip time" before the period. Under this provision, Amtrak would be allowed to compete on an equal footing with air carriers. The GSA maintains there is no longer "preferred carrier" status conferred to common carriers, except among airlines where lower government rates have been negotiated with specific carriers. However, the reality is the travel offices view the award of contract as a mandate to use such services, and use of Amtrak services is discouraged.

GRAMM-RUDMAN

Mr. CONTE. Mr. Claytor, in last year's appropriations bill, we ended up with what I considered to be a bare-bones, but generally acceptable level of funding for Amtrak.

That amount was reduced by 4.3 percent on March 1st, through the Gramm-Rudman process—a process that I strongly opposed and am fighting in the courts.

What is the impact of the 4.3 percent cut on Amtrak operations and investment during the remainder of 1986, and how will that cut affect 1987 Amtrak activities?

[The information follows:]

Last year I indicated that we could manage to get by in 1986 with a ten percent cut from the 1985 appropriation of $684 million, or $616 million. After the 4.3 percent Gramm-Rudman cut this figure was reduced to $591 million, a reduction of over $100 million from the previous year if you allow for inflation.

We will get by this time but only by using no appropriated funds this year for capital, by cutting back on our maintenance cycles, achieving such other internal efficiencies as we can manage, by refusing to consider new 403(b) proposals not previously committed, and finally, by making a number of reductions in train frequencies.

The $25 million reduction required under Gramm-Rudman will reduce equipment and right-of-way maintenance levels and eliminate the limited funds otherwise available for capital in FY 1986. We cannot continue to defer maintenance in 1987 and it is essential that we get back to the full maintenance cycle as soon as possible. This committee can help us achieve that goal by funding Amtrak at the level we requested.

AMTRAK PASSENGER PROFILE

Mr. CONTE. Mr. Claytor, there seems to be a disagreement between the Administration and Amtrak about the wealth and age of Amtrak passengers.

Would you tell me, and elaborate for the record, what portion of your passengers are older Americans, and what portion would be considered less affluent?

Also please indicate how Amtrak arrived at those figures.

[The information follows:]

Amtrak routinely conducts marketing surveys of its passengers on an ongoing basis. Almost half of Amtrak's riders, three-fourths of its passenger miles and two-thirds of its revenues come from its non-corridor operations, largely long-haul services. Results of passenger surveys taken on these services indicate that Amtrak's long-haul passengers are drawn heavily from the poor and elderly. We have found that 36% of our long-haul passengers have family incomes of under $20,000 and 58% have family incomes below $30,000. (The U.S. average family income is $28,000.) In addition, 36% of long-haul passengers are 55 and older and 18% are 65 and older.

FEDERAL SUBSIDY OF OTHER MODES

Mr. CONTE. Mr. Claytor, much has been made about the subsidy per ticket figures for Amtrak. Would you provide for the record an analysis of the subsidies for other modes of transportation?

[The information follows:]

First of all, the much-publicized $35 per passenger cost to the federal government is misleading. About half of Amtrak's subsidy goes to support the Northeast Corridor, which is a national transportation resource carrying freight and commuter service as well as intercity passenger service. If the commuters carried on the NEC are counted in the equation, the per-passenger subsidy falls to about $10.

Second, it is important to examine losses in federal income as an increment of federal costs. True, Amtrak's 1986 operating subsidy of $591 million will average

$28 for each of our 21 million passengers. Since about 20% of Amtrak's revenue is derived from business travel, resulting in reduced federal income of $2 per passenger, the total average Government cost is $30 per passenger.

However, 65% of revenues of major airlines are from business travel and so constitute income tax deductions. These lost revenues amount to $33 per air passenger or more than the same total cost to the Federal Government for Amtrak passengers. To state this another way, Amtrak's passengers tend to use their own money to pay for their tickets while air passengers tend to pay for theirs with tax deductions. In comparing subsidies, this factor needs to be taken into consideration.

In a more direct subsidization, over $2.3 billion in general funds will be used in FY 1986 to operate and maintain the air traffic control system—similar to the costs of signaling and dispatching that Amtrak pays.

In addition, tax expenditures from airport construction financed by tax-free revenue bonds alone continue to provide an enormous additional federal subsidy to air travellers. For fiscal years 1984 through 1986 alone, these tax expenditures exceeded a billion dollars.

The fact is that all public transportation is heavily subsidized. Amtrak's subsidy is explicit, while its competitors' larger subsidies are indirect and so hidden.

EFFECT OF SERVICE CURTAILMENT ON AIR TRAVEL

Mr. CONTE. If the Administration's budget request were adopted, we would see a tremendous burden in terms of passengers forced to use airports along the Northeast Corridor, especially New York and Washington.

The frequency of Amtrak service on the corridor gives a pretty good indication of when travel peaks occur at the ends of and along the corridor. Would you give us an estimate of the number of passengers who would be trying to use air service in and out of New York and Washington and other points on the corridor during peak times if Amtrak were not available?

[The information follows:]

In 1985, Amtrak carried more than twice as many passengers between and among the Northeast Corridor stations of New York, Newark, Philadelphia, Wilmington, Baltimore and Washington than all airlines combined. On a daily basis, Amtrak carries 16,500 non-commuter passengers on the corridor between New York and Washington compared to 8,000 (non-connecting) carried by the airlines. Even between the endpoints of New York and Washington, Amtrak handled almost 3,000, or 31%, of the 9,800 daily New York to Washington air and rail passengers. The additional air traffic between these endpoints alone would strain National Airport at Washington by requiring 43 additional 70-passenger flights per day. On an annual basis, these displaced Amtrak New York-Washington passengers would increase activity at National Airport by 1,090,000 passengers. Presently overcrowded New York airports would be even more severely strained. As a rule, the vast majority of these people travel during the peak hours.

AIR CARRIER CAPACITY IN NORTHEAST

Mr. CONTE. Earlier today, there was a claim made that Amtrak was "unnecessary," even on the Northeast Corridor, because the airlines had sufficient capacity to handle passengers diverted from Amtrak. Would you comment on the ability of air carriers to bring additional passengers into or out of New York and/or Washington during peak times? To what extent are Amtrak passengers "peak time" travelers?

[The information follows:]

In 1985, Amtrak carried more than twice as many passengers between and among the Northeast Corridor stations of New York, Newark, Philadelphia, Wilmington, Baltimore and Washington than all airlines combined. On a daily basis, Amtrak carries 16,500 non-commuter passengers on the corridor between New York and Washington compared to 8,000 (non-connecting) carried by the airlines. Even between the endpoints of New York and Washington, Amtrak handled almost 3,000 or 31 percent of the 9,800 daily New York to Washington air and rail passengers. The additional air traffic between these endpoints alone would strain National Airport at Washington by requiring 43 additional 70-passenger flights per day. On an annual basis, these displaced Amtrak New York-Washington passengers would increase activity at National Airport by 1,090,000 passengers.

LaGuardia Airport handles approximately 25,000 passengers a day. Excluding commuter traffic, Amtrak boards or detrains 16,600 intercity riders daily at Newark and New York's Pennsylvania and Grand Central Stations from Northeast Corridor and New York points. Many of these passengers are coming from or going to Washington, Albany, Boston, Baltimore, Buffalo, etc.—and would fly if Amtrak weren't available. It is doubtful that New York area airports could handle another 200 daily flights, or accommodate an additional 6 million passengers annually, but that's what would happen if all Amtrak's New York-bound intercity passengers switched to air.

While the statement has been made that the unused seating capacity or airlines would be sufficient to handle passengers diverted from Amtrak, the reality is that the seats have to be there when and where you need them. The fact there are unused airline seats in the Northeast Corridor does not mean that they will accommodate Amtrak's customers. An empty seat from Boston to Newark on Saturday at 1:00 p.m. cannot accommodate a customer who wants to go from Philadelphia to New York at 8:00 a.m. on Tuesday.

It is obvious that all modes including Amtrak have unused seats. These seats are, however, concentrated in off-peak hours, or off-peak days over segments of the route where ridership is of relatively lighter density. The demand for seats that would be created upon the termination of Amtrak, however, would be at peak hours, or peak days and over peak segments when and where all transportation modes run nearly at capacity. It is unlikely, for instance that National or LaGuardia could schedule additional weekday flights at around 5:00 p.m. to accommodate displaced Amtrak riders.

ATTLEBORO-HYANNIS PROJECT

Mr. CONTE. Mr. Claytor, would you provide me with an update on the rehabilitation project between Attleboro and Hyannis, Massachusetts? How is the project going, when is service likely to begin, and what sort of service will it be?

[The information follows:]

Funding for track improvements between Attleboro and Hyannis, Massachusetts, has been made available through a combination of Amtrak and Massachusetts funds. Amtrak's contribution totalled $15 million: $10 million earmarked from the Jobs Bill funding and $5 million earmarked from a previous Amtrak appropriation. The Commonwealth has also invested $15 million to allow this line to support rail passenger service. All necessary improvements have been essentially completed with the exception of the signal system which will be installed by summer 1987. Amtrak has inspected and approved these improvements.

In October 1985, Massachusetts asked Amtrak to consider becoming the operator of through weekend service between New York, Attleboro and Hyannis, and to provide an associated cost estimate. Amtrak responded in early 1986 with a cost estimate and schedule proposal which the Commonwealth accepted. Amtrak and the Commonwealth are now diligently negotiating an agreement which will permit establishment of New York-Hyannis service for weekends only, between mid-June and mid-September. The Commonwealth has agreed to pay all associated losses, and service will probably be initiated this June, assuming all contractual details have been finalized.

JUSTIFICATIONS

ROUTE SYSTEM REVIEW

Mr. LEHMAN. Please provide for the record a copy of your most recent report to Congress regarding the results of your annual basic route system review.

[The information follows:]

INTRODUCTION

Under Section 404(c)(4) of the Rail Passenger Service Act (the "Act"), Amtrak is required to conduct an annual review of each route in the basic system to determine which routes are projected to meet certain criteria applicable for that service. These criteria are passenger miles per train mile (PM/TM) and short-term avoidable loss per passenger mile (STAL/PM), adjusted from the base year of legislation. For FY86, Amtrak's long distance routes must attain a PM/TM of 150, and the short-term avoidable loss per passenger mile must not exceed 11.1¢. For applicable short-distance services, PM/TM of 80 must be achieved, with short-term avoidable loss per passenger mile not exceeding 14.4¢. In the process of route evaluation, the Corporation is obliged to evaluate the market potential for each route as well as the cost of providing service over that route. If Amtrak determines, on the basis of such a review, that a route will not meet the appropriate criteria, the Corporation is authorized to discontinue, modify or adjust the operation of rail passenger service over the route in order to meet the criteria. Following a brief economic and market overview are the results of Amtrak's projections for its route system for fiscal year 1986.

ECONOMIC AND MARKET OVERVIEW

The fiscal year 1985 was marked by weak economic growth in the national economy. The travel industry and Amtrak, however, performed somewhat stronger. Amtrak continued to benefit from our continuing efficiencies and improvements in operations and enhancements in marketing. The competitive environment heated up as carriers worked hard to take advantage of their lower costs, and deregulation allowed them to experiment with a variety of fares, freely entering and exiting markets at will. Amtrak ridership, in terms of passenger miles of travel, increased six percent, and the number of passengers increased by approximately one million. Publicity surrounding the 1984 Amtrak derailments constrained growth in the early part of the fiscal year, but growth rebounded in the later months of 1985.

Our forecast for fiscal 1986 reflects continued and somewhat increased growth in the economy, with increased fare competition in the travel industry. Amtrak will continue to be as well placed in the marketplace as resources allow, with a significant growth in passenger miles and passenger revenues. Passenger miles set a new annual record for Amtrak for the 12 months ending January 1986, and are continuing to grow significantly. Growth is and will be national in scope, as Americans increasingly choose to vacation domestically in 1986, assuring that all routes operate at levels which satisfy the passenger mile per train mile criteria. Continued revenue growth and cost efficiency improvements will assure satisfactory performance with respect to the cost criteria as well. It is the conclusion of the Corporation that all routes required to do so can meet the criteria levels in 1986.

ROUTE REVIEW

Amtrak's national route system can be divided into five major groups: Northeast Corridor (NEC) services; state-supported services operated under Section 403(b) of the Act; short-distance services; long-distance services; and commuter services operated under section 403(d) of the Act. Following are the results of Amtrak's review of routes in each of the five major route groups:

Northeast Corridor

Amtrak's Northeast Corridor (NEC), consisting of a main trunk and two branches, extends from Washington, D.C. to Boston, with the heaviest service density between Washington and New York. The branches extend from New Haven, Connecticut to Springfield, Massachusetts; and from Philadelphia to Harrisburg, Pennsylvania. In general, services over these lines are highly successful and collectively exceed existing route performance criteria for short-distance services.

Because the NEC is a highly competitive travel market, Amtrak is continually reviewing all NEC services to maximize revenues and reduce operating costs, when practical. With the October 1985 timetable change, an additional Inland Route round-trip via Springfield was added. In January, all Springfield-New Haven trains began operating without change of equipment beyond to New York, Philadelphia or Washington. Three marginal Philadelphia-Harrisburg round-trips were discontinued and other services in this market rescheduled to reduce operating losses. While no additional major route changes are planned in FY86, Amtrak will continue to make selective service adjustments to further enhance Northeast Corridor profitability.

	1985 ACTUAL		1986 PROJECTED	
	PM/TM	Short-Term Avoidable Profit (Loss) Per PM	PM/TM	Short-Term Avoidable Profit (Loss) Per PM
Metroliner Service	126	11.7¢	129	11.7¢
NEC Conventionals	177	4.0$	188	5.4¢
New York-Philadelphia	155	1.5¢	164	4.3¢
Philadelphia-Harrisburg	70	(11.4¢)	110	(1.0¢)

State-Supported Services

Under Section 403(b) of the Act, state and local governments may obtain service not included in the basic system by agreeing to assume a portion of the operating loss and capital costs of the service. While these routes are not subject to basic system route performance criteria, Amtrak works very closely with the participating states to ensure that adequate levels of service are provided at the least possible cost. Amtrak currently contracts with six states (California, Illinois, Michigan, Missouri, New York and Pennsylvania) to provide rail passenger service over 12 routes in the Amtrak system. During FY85, Amtrak discontinued three 403(b) routes -- the Tampa-Miami Silver Palm, the Duluth-St. Paul North Star, and the Charlotte-New York Carolinian -- when state funding expired. Amtrak will continue to fulfill its contractual obligation to operate 403(b) services in FY86. Projections (which include revenues from state payments) as well as FY85 actual performance for Amtrak's 403(b) services are shown on the next page:

	1985 ACTUAL		1986 PROJECTED	
	PM/TM	Short-Term Avoidable Profit (Loss) Per PM	PM/TM	Short-Term Avoidable Profit (Loss) Per PM
Philadelphia-Harrisburg	77	(3.6¢)	71	4.7¢
Syracuse-Niagara Falls	52	(12.8¢)	71	(6.7¢)
Chicago-St. Louis	59	(8.9¢)	67	(7.9¢)
Chicago-Quincy	73	(1.6¢)	77	(2.4¢)
Los Angeles-San Diego	140	(0.5¢)	169	(0.2¢)
Oakland-Bakersfield	99	(0.4¢)	105	(0.1¢)
Albany-Montreal	96	2.3¢	99	2.3¢
Chicago-Port Huron (Toronto)	93	(1.4¢)	94	(0.2¢)
Kansas City-St. Louis	58	(1.9¢)	61	(3.5¢)
Philadelphia-Pittsburgh (New York)	83	.5¢	83	2.6¢
Chicago-Carbondale*	62	1.7¢	73	(4.7¢)
Chicago-Grand Rapids	75	(0.6¢)	60	(3.2¢)

* The state-supported Chicago-Champaign route was combined with the Chicago-Carbondale route on January 12, 1986.

Short-Distance Service

Under Section 404(d)(2) of the Act, short-distance services are required to attain at least 80 passenger miles per train mile (PM/TM) and a short-term avoidable loss per passenger mile equal to or less than 14.4¢ in fiscal year 1986. On January 12, 1986, train frequencies on several short-distance routes were changed to improve the routes' financial performance. The Portland-Seattle Mt. Rainier, formerly daily, now operates Thursday through Sunday southbound and Friday through Monday northbound. Two other Amtrak trains connect Portland and Seattle. The Chicago-Detroit Wolverine/Twilight Limited was reduced from daily operation to Fridays through Sundays only. Two other Amtrak trains connect Detroit and Chicago. The New York-Niagara Falls Empire State Express was discontinued west of Albany. Three other Amtrak trains continue to serve communities between Albany and Buffalo with two of these trains continuing to Niagara Falls. The 403(b) Chicago-Carbondale Illini was combined with the Chicago-Carbondale Shawnee.

All short-distance routes in FY85 performed substantially better financially than the 14.2¢ short-term avoidable loss per passenger mile criterion. Three short-distance routes failed the PM/TM criterion of 80:

Chicago-St. Louis: This route failed criteria by only one PM/TM in FY85 with a 79 PM/TM. Ridership in the important end-point market declined sharply for approximately one-half the year as a result of the expansion of low fare airline service in that market. Early in FY86 Amtrak established a new more competitive round-trip excursion fare which improved ridership and revenues substantially. This route is forecast to meet criteria in FY86.

Chicago-Carbondale: This route consists of one round-trip daily between these cities. PM/TM in FY85 was 70. In January 1986, this service was consolidated with a 403(b) service operating between Chicago and Champaign. This consolidation retains the most heavily used trips and is forecast to improve PM/TM to 73. This train will now be included in the 403(b) category and is reported above.

Chicago-Indianapolis*: This route narrowly missed the PM/TM criterion in FY85 with a 77 PM/TM. Because of the heavy amount of connecting traffic on this route at Chicago, it will be positively affected by national promotion of Amtrak's All Aboard Fare. A modest increase in connecting traffic is forecast to move this train to criterion level in FY86.

Following are the actual performance statistics for basic system short-distance routes for FY85 as well as the projected performance for FY86:

	1985 ACTUAL		1986 PROJECTED	
	PM/TM	Short-Term Avoidable Profit (Loss) Per PM	PM/TM	Short-Term Avoidable Profit (Loss) Per PM
New York-Niagara Falls	102	(5.6¢)	114	(2.1¢)
Chicago-St. Louis	79	(8.2¢)	87	(6.7¢)
Chicago-Milwaukee	86	(9.7¢)	92	(4.6¢)
Chicago-Detroit-Toledo	97	(7.7¢)	117	(4.3¢)
Chicago-Carbondale	70	(8.9¢)		
Los Angeles-San Diego	153	(5.9¢)	165	(1.6¢)
Portland-Seattle	110	(10.0¢)	103	(7.8¢)
Chicago-Indianapolis*	77	(9.9¢)	80	(6.5¢)

---

* This route is not part of the basic system. It is operated on a demonstration basis pursuant to Section 404(g) of the Act.

Long-Distance Services

Under Section 404(d)(1) of the Act, long-distance routes are required to attain at least 150 PM/TM and loss/PM equal to or less than 11.1¢ in fiscal year 1986. All long-distance routes are projected to meet these criteria in FY86.

In FY85, all long-distance routes performed substantially better than the 10.8¢ short-term avoidable loss per passenger mile allowed. A new contract was signed with the Canadian National which should greatly reduce operating costs of the Washington-Montreal Montrealer north of the border, further shrinking this train's avoidable loss per PM. In addition, three long-distance services (the Chicago-Salt Lake City-Seattle Pioneer, the Atlanta-New Orleans portion of the New York-New Orleans Crescent, and the New York-Savannah Palmetto) were reduced from daily to triweekly from January 12 to March 20, 1986, to reduce operating costs during the off-peak months.

Five long-distance routes fell below the 150 PM/TM criterion:

Chicago-Washington-New York Cardinal: This route had its best passenger mile performance ever as a result of the switch to a daylight shcedule through West Virginia and a route specific fare promotion. While the route failed the PM/TM criteria by 7 PM/TM (143 PM/TM), continued growth is forecast for the route as awareness of the new schedule builds. In addition, the route participates in the national $7 return fare program which will improve the PM/TM. Effective in April 1986, the train will be rerouted through Indianapolis and combined with the Chicago-Indianapolis route. Both actions will help bring the route up to criterion levels.

Chicago-Los Angeles Southwest Chief: This route generated 146 PM/TM in FY85, four short of the criterion. A major service upgrade program was launched on May 1, 1985, to improve ridership. This program features movies, music, bingo, an Indian Country guide, a route scenery brochure and special tours to points along the route. As a result of this program, ridership showed an extremely positive trend in the second half of the year which is continuing into FY86. In conjunction with the All Aboard America and $7 return fare programs, the route is projected to reach a 160 PM/TM level in FY86.

Chicago-Seattle/Portland Empire Builder: This route missed the PM/TM criterion by 5 PM/TM (145 PM/TM). In FY86, a promotion of the $7 return fare and All Aboard America fare nationally and in key local markets should improve ridership substantially. In addition, the second half of the fiscal year will see heavy ridership to Seattle as a result of the Expo 86 in

Vancouver, British Columbia. Amtrak is also expanding the on-board services offered on the Empire Builder similar to those found on the Southwest Chief. These three initiatives should improve ridership and PM/TM performance to criterion levels.

Chicago-Salt Lake City-Seattle Pioneer: This route is operated as a leg of the Chicago-Oakland California Zephyr and generated 144 PM/TM in FY85. As on the Empire Builder, the $7 return fare, All Aboard America fare and Expo 86 traffic are projected to improve PM/TM to criterion levels. During the period January 12 to March 20, 1986, this train operated on a tri-weekly basis as a result of budget reductions, improving the route's PM/TM during these off-peak months.

Boston-Newport News: This route includes two services, a Washington-Newport News extension of a Northeast Corridor Boston-Washington train and a Washington-Richmond extension of a New York-Washington train. The second service, the Virginian, was added in October 1984. This new frequency gained ridership slowly until March 1985 when a program of route specific advertising, coupled with fare adjustments, caused ridership trends to accelerate rapidly. This trend has continued through FY86 and it is anticipated that PM/TM will improve substantially from 135 in FY85 to 184 in FY86.

Shown below are the long-distance route-by-route performance statistics:

	1985 ACTUAL		1986 PROJECTED	
	PM/TM	Short-Term Avoidable Profit (Loss) Per PM	PM/TM	Short-Term Avoidable Profit (Loss) Per PM
Washington-Montreal	200	(9.5¢)	211	(5.8¢)
New York-Florida (1)	203	(4.6¢)	232	(3.9¢)
New York-Florida (2)	289	(2.4¢)	304	(2.0¢)
Chicago-New York-Washington (3)	171	(2.8¢)	204	(2.1¢)
Chicago-Washington-New York (4)	143	(9.3¢)	165	(9.9¢)
Chicago-Seattle/Portland	145	(6.2¢)	159	(5.9¢)
Chicago-San Francisco/Los Angeles/Seattle (5)	161	(5.9¢)	174	(4.4¢)
(Chicago)-Salt Lake-San Francisco	256	(4.3¢)	263	(2.3¢)
(Chicago)-Salt Lake-Los Angeles	222	(3.6¢)	235	(2.6¢)
(Chicago)-Salt Lake-Seattle	144	(7.8¢)	159	(5.6¢)
Chicago-Los Angeles	146	(4.3¢)	160	(4.1¢)
Chicago-New Orleans	166	(4.1¢)	158	(3.6¢)
Chicago/New Orleans-Los Angeles (6)	184	(7.1¢)	202	(6.1¢)
Chicago-San Antonio-(Los Angeles)	299	(3.7¢)	351	(4.3¢)
New Orleans-San Antonio-(Los Angeles)	259	(4.7¢)	286	(3.3¢)
Los Angeles-Seattle	314	(1.0¢)	323	0.2¢
Chicago-New York/Boston	168	(4.0¢)	212	(2.2¢)
Boston-Newport News	135	(3.9¢)	184	(2.4¢)
New York-Savannah	157	(3.1¢)	175	(2.6¢)
New York-New Orleans	185	(3.7¢)	192	(3.1¢)
(Kansas City)/St. Louis-Centralia/(New Orleans)	172	(8.7¢)	154	(6.9¢)
Auto Train	184	3.8¢	224	6.6¢

(1) Silver Star
(2) Silver Meteor
(3) Broadway/Capitol Limited
(4) Cardinal
(5) California Zephyr/Pioneer/Desert Wind
(6) Eagle/Sunset Limited

Commuter Services

Amtrak currently operates four commuter services pursuant to Section 403(d) of the Act. Sctions 404(d)(2)(B) requires these trains to attain a PM/TM of 80, but sets no specific loss per passenger mile criteria. Amtrak closely monitors and reviews these routes to ensure that financial performance levels remain consistently high. In October 1985, Philadelphia-Harrisburg Train 601 became a state-supported 403(b) train and is reported in the 403(b) route group for FY86. On January 2, 1986, Maryland DOT assumed the operation of the Washington-Martinsburg train; FY86 statistics therefore reflect only the October-December Amtrak operation. On January 12, 1986, the two Chicago-Valparaiso trains were combined since Train 321/324 failed the PM/TM criterion. Performance statistics for all 403(d) services follow:

	1985 ACTUAL		1986 PROJECTED	
	PM/TM	Short-Term Avoidable Profit (Loss) Per PM	PM/TM	Short-Term Avoidable Profit (Loss) Per PM
New York-Philadelphia	367	1.3¢	309	1.0¢
Philadelphia-Harrisburg	92	(12.8¢)	96	(8.8¢)
New York-Harrisburg	191	(0.2¢)	180	1.4¢
Washington-Martinsburg	169	(9.5¢)	152	(21.0¢)
Chicago-Valparaiso	127	(12.7¢)	139	(9.8¢)

AMTRAK ROUTE STATISTICS

Mr. **Lehman**. Please also update the route statistics found on page 582 through 585 of last year's hearing record. Please include such information for fiscal years 1985, 1986, and 1987.

[The information follows:]

FY85 ROUTE STATISTICS

	REVENUE/ COST RATIO(1)	PM/TM	SHORT-TERM AVOIDABLE PROFIT/ (LOSS)/PM(2)
NORTHEAST CORRIDOR			
METROLINER SERVICE	1.47	126	0.117
NEC CONVENTIONALS	1.11	177	0.039
NYC-PHILADELPHIA	0.93	138	0.015
PHILADELPHIA-HARRISBURG	0.44	70	(0.114)
TOTAL NEC	1.15	160	0.048
SHORT DISTANCE			
NYC-NIAGARA FALLS	0.58	102	(0.056)
CHICAGO-ST. LOUIS	0.51	79	(0.082)
CHICAGO-MILWAUKEE	0.48	86	(0.097)
CHICAGO-DET-TOLEDO	0.49	97	(0.077)
CHICAGO-CARBONDALE	0.50	70	(0.089)
L.A.-SAN DIEGO	0.59	153	(0.059)
PORTLAND-SEATTLE	0.40	110	(0.100)
CHICAGO-INDIANAPOLIS	0.47	77	(0.099)
TOTAL SHORT DISTANCE	0.54	100	(0.069)
403B			
PHILA-HARRISBURG	0.73	77	(0.036)
SYRACUSE-NIAGARA FALLS	0.51	32	(0.128)
CHICAGO-ST. LOUIS	0.58	59	(0.089)
CHICAGO-QUINCY	0.79	73	(0.016)
L.A.-SAN DIEGO	0.88	140	0.005
OAKLAND-BAKERSFIELD	0.83	99	(0.004)
ALBANY-MONTREAL	0.95	96	0.023
CHICAGO-PORT HURON-(TOR)	0.79	93	(0.018)
MINNEAPOLIS-DULUTH	0.77	101	(0.032)
KANSAS CITY-ST. LOUIS	0.79	58	(0.019)
PHIL-PITTSBURGH-(NYC)	0.86	83	0.008
CHICAGO-CHAMPAIGN	0.92	62	0.017
MIAMI-TAMPA	0.71	71	(0.039)
MOBILE-NEW ORLEANS	0.61	59	(0.107)
CHICAGO-GRAND RAPIDS	0.82	75	(0.006)
CHARLOTTE-RICHMOND-(NYC)	0.31	128	(0.074)
TOTAL 403B	0.76	87	(0.019)
403D			
NYC-PHILADELPHIA	0.98	409	0.017
PHILA-HARRISBURG	0.38	92	(0.128)
NYC-HARRISBURG	0.87	191	(0.002)
WASHINGTON-MARTINSBURG	0.37	169	(0.095)
CHICAGO-VALPARAISO	0.36	137	(0.127)
TOTAL 403D	0.74	229	(0.017)
LONG DISTANCE			
WASHINGTON-MONTREAL (MONTREALER)	0.45	200	(0.095)
NYP-FLA: (SILVER STAR)	0.54	203	(0.046)
NYP-FLA: (SILVER METEOR)	0.63	289	(0.024)
CHICAGO-NYC/WASH (BROADWAY/CAPITOL LTD.)	0.64	171	(0.028)
CHICAGO-WASH-NYC (CARDINAL)	0.42	143	(0.093)
CHICAGO-SEA/PORTLAND (EMPIRE BUILDER)	0.54	145	(0.062)
CHICAGO-OAK/LA/SEA (3)	0.54	161	(0.059)
CHICAGO-LOS ANGELES (SOUTHWEST CHIEF)	0.59	146	(0.043)
CHICAGO-NEW ORLEANS (CITY OF NEW ORLEANS)	0.57	166	(0.041)
CHICAGO/NEW ORLEANS-LA (4)	0.47	184	(0.071)
LOS ANGELES-SEATTLE (COAST STARLIGHT)	0.77	314	(0.010)
CHICAGO-NYC/BOSTON (LAKE SHORE LIMITED)	0.59	168	(0.040)
BOSTON-NEWPORT NEWS (COLONIAL/VIRGINIAN)	0.63	135	(0.039)
NEW YORK-SAVANNAH (PALMETTO)	0.65	157	(0.031)
NEW YORK-NEW ORLEANS (CRESCENT)	0.59	185	(0.037)
(KCY)-STL-CEN-(HOU) (RIVER CITIES)	0.37	172	(0.087)
AUTO TRAIN	0.98	184	0.038
TOTAL LONG DISTANCE	0.60	183	(0.041)
ROUTE TOTAL	0.71	159	(0.020)

(1) THE RATIO OF ROUTE REVENUE (INCLUDING STATE PAYMENTS FOR 403(B) ROUTES) TO LONG-TERM AVOIDABLE COSTS.

(2) EQUALS SHORT-TERM AVOIDABLE PROFIT/(LOSS) DIVIDED BY INCREMENTAL PASSENGER MILES. SHORT-TERM AVOIDABLE PROFIT/(LOSS) EQUALS ROUTE REVENUE MINUS SHORT TERM AVOIDABLE COSTS.

(3) THE CALIFORNIA ZEPHYR/DESERT WIND/PIONEER OPERATE AS A SINGLE TRAIN BETWEEN CHICAGO AND SALT LAKE CITY WHERE THE TRAINS SEPARATE FOR THEIR RESPECTIVE DESTINATIONS OF OAKLAND, LOS ANGELES, AND SEATTLE. THE THREE TRAINS TOGETHER CONSTITUTE AN INTEGRATED ROUTE.

(4) THE SUNSET LIMITED AND THE EAGLE OPERATE AS A SINGLE TRAIN BETWEEN LOS ANGELES AND SAN ANTONIO WHERE THE TRAINS SEPARATE FOR THEIR RESPECTIVE DESTINATIONS OF NEW ORLEANS AND CHICAGO. THE TWO TRAINS TOGETHER CONSTITUTE AN INTEGRATED ROUTE.

CORPORATE PLANNING
MARCH 19, 1986

ROUTE STATISTICS
FY86 FORECAST BY ROUTE

	REVENUE/ COST RATIO(1)	PM/TM	SHORT-TERM AVOIDABLE PROFIT/ (LOSS)/PM(2)
NORTHEAST CORRIDOR			
METROLINER SERVICE	1.44	129	0.117
NEC CONVENTIONALS	1.23	180	0.054
NYC-PHILADELPHIA	0.88	147	0.009
PHILADELPHIA-HARRISBURG	0.81	110	(0.010)
TOTAL NEC	1.26	171	0.063
SHORT DISTANCE			
NYC-NIAGARA FALLS	0.72	114	(0.021)
CHICAGO-ST. LOUIS	0.54	87	(0.067)
CHICAGO-MILWAUKEE	0.64	92	(0.046)
CHICAGO-DET-TOLEDO	0.61	117	(0.043)
L.A.-SAN DIEGO	0.77	163	(0.016)
PORTLAND-SEATTLE	0.55	103	(0.078)
CHICAGO-INDIANAPOLIS	0.56	80	(0.065)
TOTAL SHORT DISTANCE	0.67	114	(0.033)
403B			
PHILA-HARRISBURG	1.10	71	0.047
SYRACUSE-NIAGARA FALLS	0.59	71	(0.067)
CHICAGO-ST. LOUIS	0.56	67	(0.079)
CHICAGO-QUINCY	0.77	77	(0.024)
L.A.-SAN DIEGO	0.84	169	(0.002)
OAKLAND-BAKERSFIELD	0.84	105	(0.001)
ALBANY-MONTREAL	0.95	99	0.023
CHICAGO-PORT HURON-(TPR)	0.84	94	(0.002)
KANSAS CITY-ST. LOUIS	0.74	61	(0.035)
PHIL-PITTSBURGH-(NYC)	0.97	83	0.026
CHICAGO-CARBONDALE	0.67	73	(0.047)
CHICAGO-GRAND RAPIDS	0.74	60	(0.032)
TOTAL 403B	0.90	89	(0.012)
403D			
NYC-PHILADELPHIA	0.95	346	0.015
PHILA-HARRISBURG	0.46	96	(0.080)
NYC-HARRISBURG	0.98	180	0.014
WASHINGTON-MARTINSBURG	0.22	152	(0.210)
CHICAGO-VALPARAISO	0.43	139	(0.098)
TOTAL 403D	0.81	219	(0.066)
LONG DISTANCE			
WASHINGTON-MONTREAL (MONTREALER)	0.56	211	(0.050)
NYP-FLA: (SILVER STAR)	0.57	232	(0.039)
NYP-FLA: (SILVER METEOR)	0.66	304	(0.020)
CHICAGO-NYC/WASH (BROADWAY/CAPITOL LTD.)	0.66	204	(0.021)
CHICAGO-WASH-NYC (CARDINAL)	0.44	165	(0.099)
CHICAGO-SEA/PORTLAND (EMPIRE BUILDER)	0.54	159	(0.059)
CHICAGO-OAK/LA/SEA (3)	0.60	174	(0.044)
CHICAGO-LOS ANGELES (SOUTHWEST CHIEF)	0.59	160	(0.041)
CHICAGO-NEW ORLEANS (CITY OF NEW ORLEANS)	0.60	158	(0.036)
CHICAGO/NEW ORLEANS-LA (4)	0.50	202	(0.061)
LOS ANGELES-SEATTLE (COAST STARLIGHT)	0.85	323	0.002
CHICAGO-NYC/BOSTON (LAKE SHORE LIMITED)	0.66	212	(0.022)
BOSTON-NEWPORT NEWS (COLONIAL/VIRGINIAN)	0.69	184	(0.024)
NEW YORK-SAVANNAH (PALMETTO)	0.68	175	(0.026)
NEW YORK-NEW ORLEANS (CRESCENT)	0.62	192	(0.031)
(KCY)-STL-CEN-(NOL) (RIVER CITIES)	0.42	154	(0.069)
AUTO TRAIN	1.16	224	0.066
TOTAL LONG DISTANCE	0.64	201	(0.031)
ROUTE TOTAL	0.78	175	(0.008)

(1) THE RATIO OF ROUTE REVENUE (INCLUDING STATE PAYMENTS FOR 403(B) ROUTES) TO LONG-TERM AVOIDABLE COSTS.

(2) EQUALS SHORT-TERM AVOIDABLE PROFIT/(LOSS) DIVIDED BY INCREMENTAL PASSENGER MILES. SHORT-TERM AVOIDABLE PROFIT/(LOSS) EQUALS ROUTE REVENUE MINUS SHORT TERM AVOIDABLE COSTS.

(3) THE CALIFORNIA ZEPHYR/DESERT WIND/PIONEER OPERATE AS A SINGLE TRAIN BETWEEN CHICAGO AND SALT LAKE CITY WHERE THE TRAINS SEPARATE FOR THEIR RESPECTIVE DESTINATIONS OF OAKLAND, LOS ANGELES, AND SEATTLE. THE THREE TRAINS TOGETHER CONSTITUTE AN INTEGRATED ROUTE.

(4) THE SUNSET LIMITED AND THE EAGLE OPERATE AS A SINGLE TRAIN BETWEEN LOS ANGELES AND SAN ANTONIO WHERE THE TRAINS SEPARATE FOR THEIR RESPECTIVE DESTINATIONS OF NEW ORLEANS AND CHICAGO. THE TWO TRAINS TOGETHER CONSTITUTE AN INTEGRATED ROUTE.

CORPORATE PLANNING
MARCH 19, 1986

ROUTE STATISTICS
FY87 FORECAST BY ROUTE

	REVENUE/ COST RATIO(1)	PM/TM	SHORT-TERM AVOIDABLE PROFIT/ (LOSS)/PM(2)
NORTHEAST CORRIDOR			
METROLINER SERVICE	1.40	133	0.125
NEC CONVENTIONALS	1.26	193	0.029
NYC-PHILADELPHIA	0.90	182	0.013
PHILADELPHIA-HARRISBURG	0.83	113	(0.007)
TOTAL NEC	1.29	177	0.068
SHORT DISTANCE			
NYC-NIAGARA FALLS	0.78	118	(0.008)
CHICAGO-ST. LOUIS	0.61	90	(0.048)
CHICAGO-MILWAUKEE	0.69	93	(0.023)
CHICAGO-DET-TOLEDO	0.68	121	(0.027)
L.A.-SAN DIEGO	0.94	170	0.013
PORTLAND-SEATTLE	0.36	106	(0.075)
CHICAGO-INDIANAPOLIS	0.67	83	(0.035)
TOTAL SHORT DISTANCE	0.75	118	(0.016)
403B			
PHILA-HARRISBURG	0.91	71	0.006
SYRACUSE-NIAGARA FALLS	0.61	74	(0.057)
CHICAGO-ST. LOUIS	0.62	69	(0.059)
CHICAGO-QUINCY	0.86	79	0.002
L.A.-SAN DIEGO	0.92	174	0.010
OAKLAND-BAKERSFIELD	0.90	109	0.010
ALBANY-MONTREAL	0.96	101	0.026
CHICAGO-PORT HURON-(TOR)	0.86	97	0.001
KANSAS CITY-ST. LOUIS	0.73	63	(0.039)
PHIL-PITTSBURGH-(NYC)	1.00	85	0.032
CHICAGO-CARBONDALE	0.79	75	(0.015)
CHICAGO-GRAND RAPIDS	0.75	62	(0.030)
TOTAL 403B	0.84	92	(0.005)
403B			
NYC-PHILADELPHIA	0.97	334	0.019
PHILA-HARRISBURG	0.48	103	(0.083)
NYC-HARRISBURG	1.01	185	0.018
CHICAGO-VALPARAISO	0.42	132	(0.106)
TOTAL 403B	0.87	230	0.002
LONG DISTANCE			
WASHINGTON-MONTREAL (MONTREALER)	0.38	213	(0.052)
NYP-FLA: (SILVER STAR)	0.62	239	(0.025)
NYP-FLA: (SILVER METEOR)	0.72	313	(0.011)
CHICAGO-NYC/WASH (BROADWAY/CAPITOL LTD.)	0.70	210	(0.015)
CHICAGO-WASH-NYC (CARDINAL)	0.45	195	(0.095)
CHICAGO-SEA/PORTLAND (EMPIRE BUILDER)	0.39	163	(0.040)
CHICAGO-OAK/LA/SEA (3)	0.63	182	(0.038)
CHICAGO-LOS ANGELES (SOUTHWEST CHIEF)	0.68	165	(0.022)
CHICAGO-NEW ORLEANS (CITY OF NEW ORLEANS)	0.62	162	(0.031)
CHICAGO/NEW ORLEANS-LA (4)	0.53	209	(0.036)
LOS ANGELES-SEATTLE (COAST STARLIGHT)	0.93	333	0.011
CHICAGO-NYC/BOSTON (LAKE SHORE LIMITED)	0.73	218	(0.010)
BOSTON-NEWPORT NEWS (COLONIAL/VIRGINIAN)	0.77	190	(0.010)
NEW YORK-SAVANNAH (PALMETTO)	0.78	171	(0.008)
NEW YORK-NEW ORLEANS (CRESCENT)	0.66	194	(0.023)
(KCTY-STL-CDN-NOL) (RIVER CITIES)	0.43	159	(0.067)
AUTO TRAIN	1.19	230	0.072
TOTAL LONG DISTANCE	0.69	200	(0.021)
ROUTE TOTAL	0.83	180	0.001

(1) THE RATIO OF ROUTE REVENUE (INCLUDING STATE PAYMENTS FOR 403(B) ROUTES) TO LONG-TERM AVOIDABLE COSTS.

(2) EQUALS SHORT-TERM AVOIDABLE PROFIT/(LOSS) DIVIDED BY INCREMENTAL PASSENGER MILES. SHORT-TERM AVOIDABLE PROFIT/(LOSS) EQUALS ROUTE REVENUE MINUS SHORT TERM AVOIDABLE COSTS.

(3) THE CALIFORNIA ZEPHYR/DESERT WIND/PIONEER OPERATE AS A SINGLE TRAIN BETWEEN CHICAGO AND SALT LAKE CITY WHERE THE TRAINS SEPARATE FOR THEIR RESPECTIVE DESTINATIONS OF OAKLAND, LOS ANGELES, AND SEATTLE. THE THREE TRAINS TOGETHER CONSTITUTE AN INTEGRATED ROUTE.

(4) THE SUNSET LIMITED AND THE EAGLE OPERATE AS A SINGLE TRAIN BETWEEN LOS ANGELES AND SAN ANTONIO WHERE THE TRAINS SEPARATE FOR THEIR RESPECTIVE DESTINATIONS OF NEW ORLEANS AND CHICAGO. THE TWO TRAINS TOGETHER CONSTITUTE AN INTEGRATED ROUTE.

CORPORATE PLANNING
[illegible]

SERVICE CHANGES

Mr. LEHMAN. Mr. Claytor, would you explain the route or service changes you have made or plan to make in fiscal year 1986, and also tell us what your budget proposes in this area for fiscal year 1987?

Mr. CLAYTOR. Yes, Mr. Chairman. We can submit to you a full list of all the changes we have made.

I can summarize the principal ones. Philadelphia to Harrisburg, we took off several trains. That is a multiple train frequency and those trains have lost more money than any of our other short-distance trains and we worked with the Pennsylvania Transportation Department in taking this action and in rescheduling the remaining trains. It worked out very well.

We reduced on a seasonal basis, several long-haul trains, the Pioneer from Salt Lake City up to Portland and Seattle. Reduced it from daily to three times a week during the off-season from January to March.

We did the same thing with the Amtrak Crescent between Atlanta and New Orleans, also another daily train in the southeast, the train from New York to Savannah, running it only on weekends.

And we had a number of short-distance trains that were cut back in Illinois and Michigan.

We probably, we may in September, which is a low month, for certain areas of the country, we may in September consider a three times a week operation for some other trains. Before we do that, before we take any other action along that line we need to analyze the actual cost savings resulting from the actions that we took from January to March. We will not have that data for another six weeks. And then we will decide the extent to which we might want to repeat that with those or other trains in the coming season, that is, in the fall of 1986 or in the winter of 1987.

[The information referred to follows:]

The following actions are considered permanent, although always subject to reconsideration and change:

Name/route	Action
Mt. Rainier/(Portland-Seattle)	Daily to four days per week.
Shawnee/(Chicago-Carbondale)	Combined with Chicago-Champaign Illini.
Wolverine-Twilight Limited/(Chicago-Detroit).	Daily to Fri.-Sat.-Sun. only.
Indiana Connection/(Chicago-Valparaiso).	Combined with Chicago-Valparaiso Calumet.
State House/(Chicago-St. Louis)	Discontinued Sat. southbound; Sun. northbound.
Empire State Express/(New York-Niagara Falls).	Discontinued between Albany and Niagara Falls.
Harrisburg-Philadelphia	Three weekday round trips discontinued, with a fourth planned for April 28.
Blue Ridge (Washington-Martinsburg)	Maryland DOT assumed responsibility for operation.

The following services were operated on a triweekly basis from January 12 to March 20 and have resumed daily services:

Name/route	Action
Pioneer/(Chicago-Seattle)	Operated triweekly between Salt Lake City and Seattle.

Name/route	Action
Crescent/(New York-New Orleans)	Operated triweekly between Atlanta and New Orleans.
Palmetto/(New York-Savannah)	Operated triweekly between Washington and Savannah.

403 (b) AND (d) SERVICE CHANGES

Mr. LEHMAN. Mr. Claytor, did you make or do you plan to make any changes to your section 403[b] and 403[d] service in fiscal year 1986?

If so, would you elaborate on the major changes that were made?

[The information follows:]

Recent 403(b) discontinuances:		
LA–MS–AL	Mobile-New Orleans	1 daily round trip (1/6/85).
Florida	Miami-Tampa	1 daily round trip (4/30/85).
Minnesota	St. Paul-Duluth	1 daily round trip in summer; weekends only in winter (4/7/85).
North Carolina	Richmond-Raleigh-Charlotte	1 daily round trip (9/2/85).
Recent 403(d) discontinuances:		
Indiana	Chicago-Valparaiso	1 daily round trip 1/12/96 (trains 321/324).
Pennsylvania	Philadelphia-Harrisburg	1 weekday one-way trip from Philadelphia to Harrisburg 1/12/86 (train 601).

403 (b) AND (d) FINANCIAL STATISTICS

Mr. LEHMAN. Please provide for the record data on section 403[b] and 403[d] service for fiscal years 1986 and 1987 similar to what appears on pages 588 and 589 of last year's hearing record.

[The information follows:]

AMTRAK 403(B) AND 403(D) SERVICES - FISCAL YEAR 1986

	Projected State Contribution 1/	Projected Amtrak Contribution 2/	PM/TM	Revenue/Cost Ratio 3/
403(B)				
Philadelphia-Harrisburg 4/	702	(125)	71	1.10
Syracuse-Niagara Falls	435	1091	71	0.59
Chicago-St. Louis 5/	508	1594	67	0.56
Chicago-Quincy	1055	911	77	0.77
Los Angeles-San Diego	1133	1252	169	0.84
Oakland-Bakersfield	2969	1595	105	0.84
Albany-Montreal	835	156	99	0.95
Chicago-Port Huron-(TOR)	1179	753	94	0.84
Kansas City-Centralia-(NOL)	2920	2028	61	0.74
Pittsburgh-Philadelphia-(NYC)	912	106	83	0.97
Chicago-Carbondale 6/	598	1536	73	0.67
Chicago-Grand Rapids	447	606	60	0.74
TOTAL 403(B)	13693	11503	89	0.80
403(D)				
New York-Philadelphia	-	375	346	0.95
Philadelphia-Harrisburg 7/	-	1240	96	0.46
New York-Harrisburg	-	48	180	0.98
Washington-Martinsburg 8/	-	350	152	0.22
Chicago-Valparaiso 9/	-	511	139	0.43
TOTAL 403(D)	-	2524	219	0.81

1/ Projected state contribution is based on 45 percent of short-term avoidable loss in first year, 65 percent the second and subsequent years, plus 50 percent of the associated equipment capital cost.

2/ Equals route revenue (including state contribution for 403(b) routes) minus long-term avoidable cost.

3/ The ratio of route revenue (including state contribution for 403(b) routes) to long-term avoidable cost.

4/ One additional round trip (trains 601,614-618) operates from January 13 to June 30, 1986.

5/ Shown is the impact of Chicago-St. Louis service although it is subsidized by the State of Illinois only between Chicago and Springfield.

6/ Shown is the impact of Chicago-Carbondale service although it is subsidized by the State of Illinois between Chicago and Champaign.

7/ One frequency (train 601) discontinued effective January 12, 1986.

8/ Shown October through December only due to Maryland DOT takeover January 2, 1986.

9/ One round trip (trains 321/324) discontinued effective January 12, 1986.

Corporate Planning
March 17, 1986
disc 131, 403bd86

AMTRAK 403(B) AND 403(D) SERVICES - FISCAL YEAR 1987

	Projected State Contribution 1/	Projected Amtrak Contribution 2/	PM/TM	Revenue/Cost Ratio 3/
403(B)				
Philadelphia-Harrisburg	252	102	71	0.91
Syracuse-Niagara Falls	418	1015	74	0.61
Chicago-St. Louis 4/	606	1336	69	0.62
Chicago-Quincy	1086	491	79	0.86
Los Angeles-San Diego	642	519	174	0.92
Oakland-Bakersfield	2608	1028	109	0.90
Albany-Montreal	883	125	101	0.96
Chicago-Port Huron-(TOR)	960	704	97	0.86
Kansas City-Centralia-(NOL)	3281	2217	63	0.73
Pittsburgh-Philadelphia-(NYC)	433	(17)	85	1.00
Chicago-Carbondale 5/	471	893	75	0.79
Chicago-Grand Rapids	619	611	62	0.75
TOTAL 403(B)	12259	9024	92	0.84
403(D)				
New York-Philadelphia	-	206	354	0.97
Philadelphia-Harrisburg	-	1178	103	0.48
New York-Harrisburg	-	(13)	185	1.01
Chicago-Valparaiso	-	407	132	0.42
TOTAL 403(D)	-	1778	230	0.87

1/ Projected state contribution is based on 45 percent of short-term avoidable loss in first year, 65 percent the second and subsequent years, plus 50 percent of the associated equipment capital cost.

2/ Equals route revenue (including state contribution for 403(b) routes) minus long-term avoidable cost.

3/ The ratio of route revenue (including state contribution for 403(b) routes) to long-term avoidable cost.

4/ Shown is the impact of Chicago-St. Louis service although it is subsidized by the State of Illinois only between Chicago and Springfield.

5/ Shown is the impact of Chicago-Carbondale service although it is subsidized by the State of Illinois between Chicago and Champaign.

Corporate Planning
March 17, 1986
disc 131, 403bd86

REVENUE/COST PERFORMANCE

Mr. **Lehman**. Last year, you projected that you would achieve a 60 percent revenue/cost ratio for fiscal year 1986. Do you think you will actually meet 60 percent in fiscal year 1986, what ratio do you project for fiscal year 1987, and what is your goal for 1990?

Mr. **Claytor**. In Fiscal Year 1986 we will have a 61 percent—not 60, we are going to make 61. We are going to make 63 in 1987 and we have not got a figure fixed for 1988 and 1989; that is going to depend, to some extent, on appropriations and on capital. A dearth of capital makes it harder and harder to keep this ratio going up. But I personally hope that we can make 70 percent by 1990.

But that is a hope and it is going to depend on a lot of questions that we do not now know the answers to.

Mr. **Lehman**. Please provide for the record data on your revenue/cost performance similar to what appears on pages 589 and 590 of last year's hearing record and include your estimate for fiscal year 1987.

[The information follows:]

REVENUE/COST RATIO 1971 THROUGH CURRENT YEAR BUDGET
(ADJUSTED TO CURRENT ACCOUNTING METHOD)
($ MILLIONS)

YEAR	EXPENSE	EXP. EXCL.	NET EXPENSE	REVENUE	RATIO
CY 1971	192.5	(0.1)	192.4	100.9	0.52
CY 1972	310.1	(3.2)	306.9	162.6	0.53
TP 1973 (JAN-JUN)	168.0	(2.2)	165.8	89.2	0.54
FY 1974	438.2	(16.3)	421.9	240.1	0.57
FY 1975	559.8	(32.3)	527.5	246.4	0.47
FY 1976	674.3	(42.8)	631.5	268.0	0.42
TQ 1976 (JUL-SEPT)	202.5	(16.3)	186.2	79.4	0.43
FY 1977	945.3	(76.0)	869.3	415.5	0.48
FY 1978	1,010.6	(82.7)	927.9	433.3	0.47
FY 1979	1,113.2	(90.5)	1,022.7	496.3	0.49
FY 1980	1,275.7	(113.4)	1,162.3	558.8	0.48
FY 1981	1,442.5	(162.8)	1,279.7	612.2	0.48
FY 1982	1,401.4	(215.2)	1,186.2	630.7	0.53
FY 1983	1,469.4	(238.5)	1,230.9	664.4	0.54
FY 1984	1,522.1	(163.1)	1,359.0	758.8	0.56
FY 1985	1,600.1	(169.8)	1,430.3	825.8	0.58
FY 1986 Budget	1,612.4	(153.4)	1,459.0	895.0	0.61
FY 1987 Estimate	1,683.3	(163.1)	1,520.2	950.1	0.63

DMZ 3/18/86

ON-TIME PERFORMANCE

Mr. LEHMAN. Last year it was reported that your on-time performance has increased from 57.2 percent in fiscal year 1979 to 81.5 percent in fiscal year 1983.

What was your on-time performance in fiscal year 1985, and what is your goal for fiscal years 1986 and 1987?

[The information follows:]

Total system on-time performance in Fiscal Year 1985 was 80.8 percent, and the corporate goal for Fiscal Year 1986 is 82 percent.

RIDERSHIP PROJECTIONS

Mr. LEHMAN. You also projected last year that your fiscal year 1986 ridership would increase by about 2 percent— from 20.9 million to approximately 21.4 million riders.

Will you, in fact, equal or surpass the 21.4 million figure for fiscal year 1986, and what have you budgeted for fiscal year 1987?

Mr. CLAYTOR. Well, so far, in 1986 for the first quarter, our increase in ridership has been 3 percent. And I expect probably a comparable increase from 1986 to 1987. And I want to say in answer to some other questions I will go into it in more detail.

Ridership is not the best test. Ridership will vary enormously if one or two commuter trains go on or off because of the short distance, and the number of riders in the short distance. The key test that we use is passenger revenue and directly related to that is revenue passenger miles. So those are the two factors that really show growth better than just ridership.

RIDERSHIP AND REVENUE PERFORMANCE

Mr. LEHMAN. Please provide information on passenger miles, revenue and ridership similar to what appears on page 591 of last year's hearing record. Please add 1987 columns.

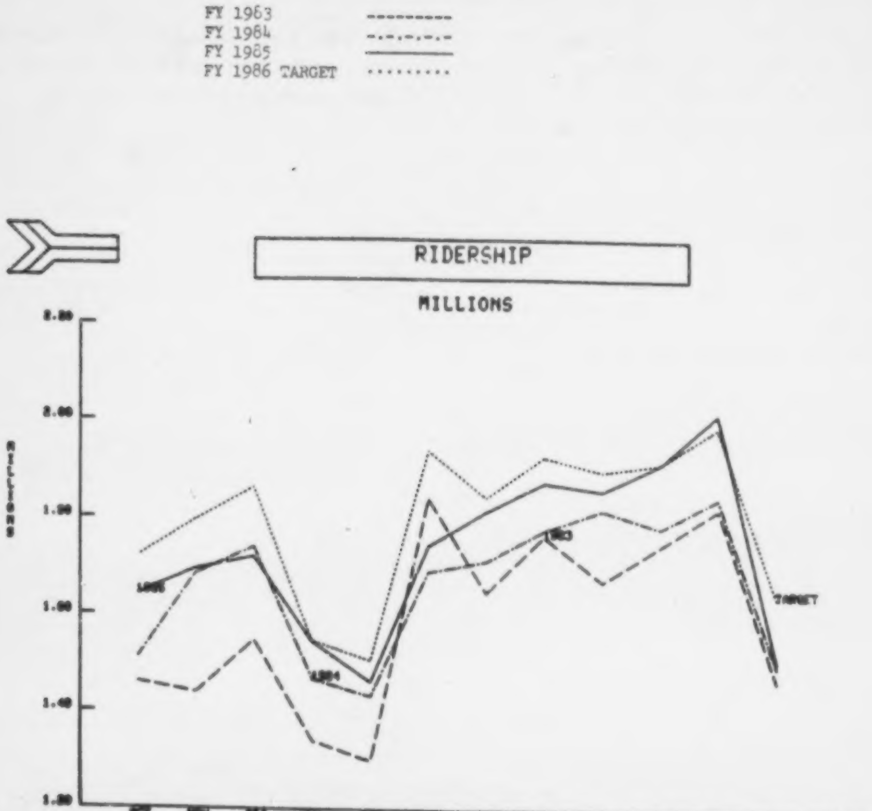
[The information follows:]

Period	Passenger Miles (Millions)	Ridership (Millions)	Revenue ($ Millions)	Percent Change from Prior Year		
				Passenger Miles	Ridership	Revenue
CY 71 May-December	1779	10.6	100.9			
CY 72	2978	16.6	162.6	67.4%	56.6%	61.1%
FY 74	4290	18.4	240.1	44.1%	10.8%	47.7%
FY 75	3946	17.3	246.5	-8.0%	-6.0%	2.7%
FY 76	4055	17.8	283.0	2.8%	2.9%	14.8%
FY 77	4333	19.2	415.4	6.9%	7.9%	46.8%
FY 78	4029	18.9	433.3	-7.0%	-1.6%	4.3%
FY 79	4915	21.4	496.3	22.0%	13.2%	14.5%
FY 80	4582	21.2	558.8	-6.8%	-0.9%	12.6%
FY 81	4762	20.6	612.2	3.9%	-2.8%	9.6%
FY 82	4172	19.0	630.7	-12.4%	-7.8%	3.0%
FY 83	4246	19.0	664.4	1.8%	0.0%	5.3%
FY 84	4552	19.9	758.8	7.2%	4.7%	14.2%
FY 85	4825	20.8	825.8	6.0%	4.5%	8.8%
FY 86 Estimate	4966	21.6	895.0	2.9%	3.8%	8.4%
FY 87 Projection	5085	22.0	950.1	2.4%	1.9%	6.2%

DMZ 3/18/86

Mr. Lehman. Please also update the ridership graph appearing on page 592 of last year's hearing record by adding lines for 1985 and 1986.

[The information follows:]



	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	YTD TOT
FY83 ACTUAL	1.480	1.430	1.548	1.330	1.300	1.840	1.647	1.763	1.671	1.745	1.881	1.457	19.030
FY84 ACTUAL	1.510	1.683	1.730	1.486	1.430	1.683	1.711	1.775	1.818	1.760	1.843	1.457	19.944
FY85 ACTUAL	1.640	1.693	1.710	1.543	1.465	1.745	1.813	1.878	1.857	1.918	2.015	1.488	20.777
FY86 TARGET	1.718	1.794	1.880	1.545	1.506	1.877	1.848	1.925	1.896	1.913	1.987	1.640	21.564

C.9

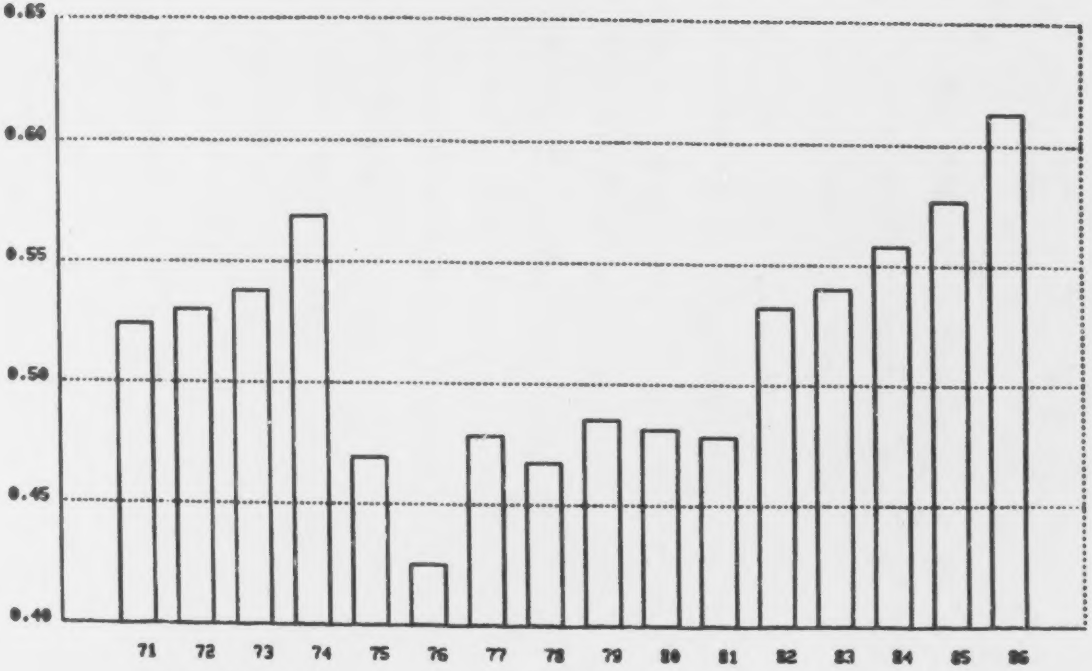
DMZ 3/18/86

PERFORMANCE MEASURES

Mr. **Lehman**. Please also provide for the record updated bar charts and supporting data on Amtrak performance measures appearing on page 593 through 602 of last year's hearing record.

[The information follows:]

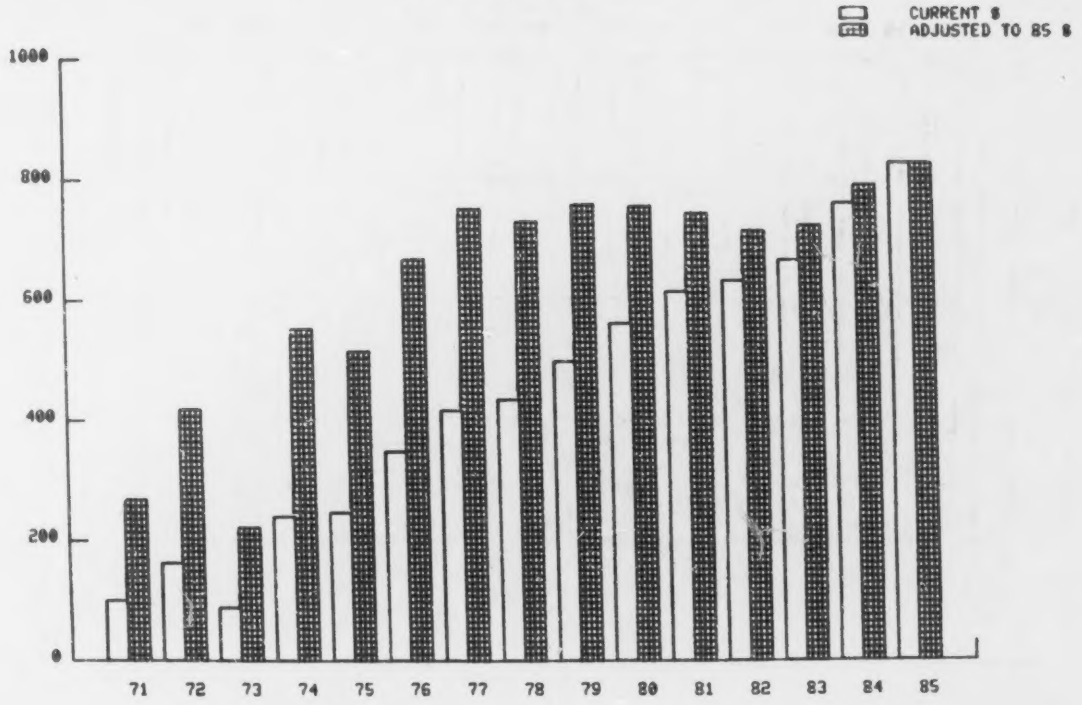
AMTRAK
REVENUE COST RATIO
FY 1971 - FY 1986



NOTE — FY73 IS 6 MONTH TRANSITION PERIOD (JAN-JUN)
— FY76 INCLUDES TRANSITION QUARTER

AMTRAK
MARCH 1986

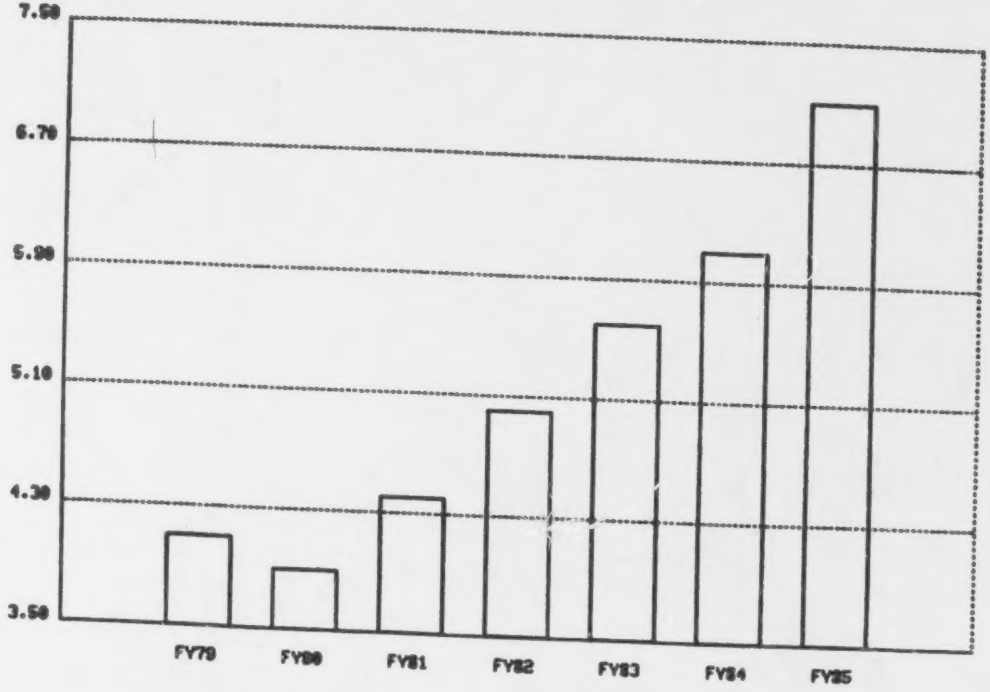
AMTRAK
REVENUE
FY 1971 - FY 1985



NOTE -- FY73 IS 6 MONTH TRANSITION PERIOD (JAN-JUN)
-- FY76 INCLUDES TRANSITION QUARTER

AMTRAK
MARCH 1986

AMTRAK
PASSENGER MILES PER FEDERAL SUPPORT $
FY 1979 - FY 1985



NOTE — FEDERAL SUPPORT IN CONSTANT 1985 DOLLARS

AMTRAK
MARCH 1986

AMTRAK ON-TIME PERFORMANCE

Fiscal Year	Amtrak System	NEC	NYP-WAS Metroliners
1975	77.3	79.4	76.0
1976	74.0	76.0	62.9
1977	63.8	68.0	44.4
1978	62.1	64.6	54.4
1979	57.2	60.6	45.8
1980	69.1	70.3	60.9
1981	77.0	73.1	77.9
1982	79.1	76.5	86.4
1983	81.5	79.6	84.8
1984	80.1	83.4	88.6
1985	80.8	83.7	85.8

COMPLAINTS

	Complaints Per 10,000 Riders
FY81	12.2
FY82	11.4
FY83	11.1
FY84	8.1
FY85	6.6

SLOW ORDERS

Year	Average Miles of Slow orders Per Calendar Year Between Boston and Washington
1977	131.79
1978	125.64
1979	129.38
1980	60.08
1981	24.70
1982	7.99
1983	3.68
1984	3.64
1985	2.16

CONSTANT DOLLAR FEDERAL SUBSIDIES

Mr. **Lehman**. You are proposing a fiscal year 1987 funding level of $636 million, which is $45 million more than the post-Gramm-Rudman-Hollings fiscal year 1986 level of $591 million.

In terms of constant dollars, what percentage growth does this represent?

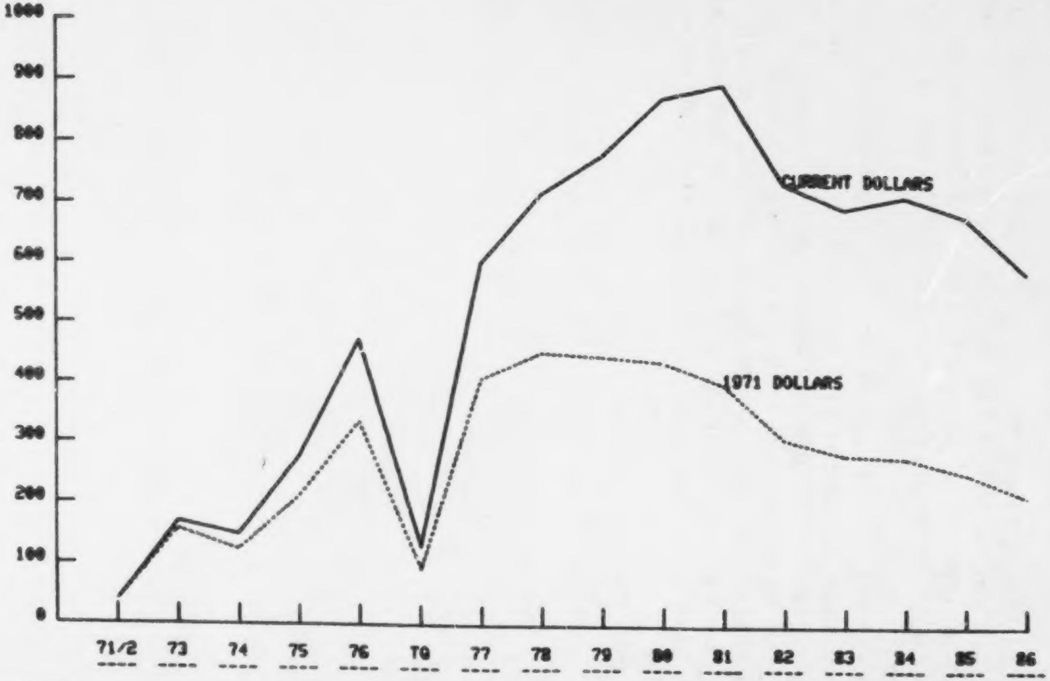
Mr. **Claytor**. The Fiscal Year 1987 request reflects a constant dollar increase of approximately 3.4 percent. The increase results entirely from the $29 million requirement for capital. In constant dollars, the operating requirement reflects a 1.4 percent reduction.

Mr. **Lehman**. Please provide for the record, a graph plotting all federal funds expended by Amtrak in both current dollars and constant dollars since fiscal year 1971 similar to what appears on page 604 of last year's hearing record.

[The information follows:]

DATE PREPARED: 03/18/86

AMTRAK
OPERATING GRANT
FY 1971 - FY 1986



	71/2	73	74	75	76	TQ	77	78	79	80	81	82	83	84	85	86
CURRENT DOLLARS	40	170	140	277	471	130	601	716	779	873	896	735	695	716	684	591
1971 DOLLARS	40	157	124	211	336	93	408	452	446	437	401	310	284	280	256	216

APPROPRIATIONS HISTORY

Mr. **Lehman**. Please also update for the record the funding table appearing on page 605 of last year's hearing record.

[The information follows:]

AMTRAK APPROPRIATIONS HISTORY
($ MILLIONS)

FY	BLOCK GRANT	OPERATING	CAPITAL	LOAN PAYOFF	NEC PURCHASE	LABOR PROT.
71/72		40.0				
73		170.0				
74		146.6	2.5			
75		276.5				
76		357.0	114.2			
TQ 3_/		105.0	25.0			
77		482.6	93.1		25.0	
78		536.0	130.0	25.0	25.0	
79		600.0	130.0	25.0	24.0	
80		650.4	191.0		12.0	20.0
81		720.2	187.1			-11.0
82	735.0					
83	670.0		25.0 1_/			
84	716.4					
85	680.0		4.0 2_/			
86	590.7					
87 Request	636.0					
TOTAL	4028.1	4084.3	901.9	50.0	86.0	9.0

1_/ excludes $ 5 million for the Cape Cod project turned over to the State of Mass.

2_/ Reserved for Bush River Bridge

3_/ Transition Quarter from July 1976-September 1976 when Federal Government changed fiscal year to current October to September time frame.

GRAMM-RUDMAN

Mr. **Lehman**. On page 2 of your justification statement, $20 million of the $25 million Gramm-Rudman reduction was taken out of your operating budget.

Would you explain the impact this $20 million reduction had on your operations?

Mr. **Claytor**. Yes. That was primarily done in deferral of maintenance. Both maintenance-of-way and maintenance-of-equipment and that is one of the things that I was referring to before, I think that we are going to have to—we cannot keep it in effect, we may have to reverse some of it. But when faced with this, right now, there was almost no other way to do it quickly and that is the way it has been done.

CAPITAL PROGRAM

Mr. **Lehman**. You will be able to maintain only a $25 million capital program in fiscal year 1986, and propose only a $64 million capital program in fiscal year 1987. Roughly, what capital funding level do you think is needed to maintain your current level of service and not adversely affect the safety of your passengers and employees?

Mr. **Claytor**. Well, we really need a minimum of $100 million on the average of capital each year. We have a $1.5 billion of expenditures. Looking at a railroad with a $1.5 billion expenditures, $100 million capital is a fairly small figure, but I think it is a minimum that we could get by with and I would try for closer to $150 million.

Let me add, we get an extraordinarily good return on this capital. For most capital projects, we insist on an internal rate of return of better than 20 percent, i.e., payback in five years or better.

And when we fail to make one of those investments because we do not have the money. I look at it as giving away operating money because that is what it is.

But you have to hit a medium between the money that you can spend and what you can save with it.

STATUS OF LABOR NEGOTIATIONS

Mr. **Lehman**. On page 1 you say that your principal budget uncertainty for fiscal year 1987 is the impact of labor negotiations. Would you explain more fully what negotiations these are and where they stand currently?.

Also what is a rough estimate of the dollar range in your fiscal year 1987 budget that these negotiations could influence?

[The information follows:]

From a positive standpoint, the approach of certain labor organizations to the special circumstances created by Congressional and Administration efforts to reduce Federal funding for Amtrak have been both responsive and constructive. However, it must also be pointed out that not all of the unions involved have been willing to address changes in established practices to the degree we believe to be both warranted and necessary. Recognizing that the most substantial savings could be achieved by the direct employment of train and engine crews, we have devoted significant time and effort in reaching agreements with the Brotherhood of Locomotive Engineers and the United Transportation Union. Both Organizations recognized the importance and the need for change. Agreements were concluded on December 23, 1985, with the Brotherhood of Locomotive Engineers and on January 29, 1986 with the United Transportation Union.

When fully implemented, the Agreement will provide a maximum of 1,500 additional Amtrak employees operating over 17 railroads replacing a current work force of 2,100 freight railroad employees, and will save between $20 and $30 million annually, provided the current route structure is not changed. We plan to implement the takeover over an 18-month to 2-year period.

In order to reduce cost, Amtrak has been negotiating with the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) for the right to use part-time employees to cover peak periods and to reduce overtime. No existing employees would be required to work on a part time basis unless they choose to do so. If Amtrak is to maintain the existing 5 Reservation Sales Offices, an agreement along these lines must be reached to save approximately $4 million, a saving we must achieve in order to operate within the reduced budget levels.

With regard to the Brotherhood of Maintenance of Way Employes (BMWE), the Mediation Board has taken jurisdiction in an effort to assist both parties in settling contract changes filed by the BMWE in January 1984. The BMWE, as well as the other organizations, is asking for full recovery of the 12 percent wage increases given up during the last wage negotiations. The 12 percent increase alone translates into $65 million in additional costs annually if both the BMWE and employees of all crafts recouped their wage deferral. In addition, the BMWE is seeking substantive rules changes that will restrict the use of employees, provide greater labor protection, and prohibit Amtrak from contracting work to parties not covered by the BMWE Agreement. Amtrak is seeking rules changes that will increase its flexibility in the use of employees and eliminate the minimum force agreements that were in effect for NEC construction and that require Amtrak to retain more employees than are necessary to perform scheduled maintenance work. If Amtrak is unable to eliminate this requirement, the additional cost to Amtrak for virtually no benefit will be approximately $8 million annually. Amtrak has met 23 times with the BMWE; 13 of these meetings have included a mediator and have had little success. We remain in the mediation process.

The wage and fringe benefit requests of the Amtrak Service Workers Council, International Brotherhood of Electrical Workers, International Brotherhood of Firemen & Oilers, Sheet Metal Workers International Association, American Train Dispatchers Association, and Railroad Yardmasters of America (Station Masters) are being negotiated for Amtrak by the National Carriers Conference Committee (NCCC). To date, no agreements have been reached between the NCCC and the above unions. An agreement has been reached between the NCCC and BRAC covering wage and fringe benefits for Amtrak employees subject to ratification by the membership.

In addition, Amtrak has signed agreements with American Railway and Airway Supervisors Association (Technicians and on-board

Supervisors); Railroad Yardmasters of America (New Orleans Union Passenger Terminal); International Brotherhood of Boilermakers, Iron Ship Builders; Brotherhood of Locomotive Engineers (New Orleans Union Passenger Terminal); Amtrak Service Workers Council (wages and fringe); and the Joint Council of Carmen, Helpers, Coach Cleaners (wages and fringe) to apply the applicable provisions of the agreements between the NCCC and the individual unions.

The Section 6 Notices of the American Railway and Airway Supervisors Association (Mechanical & Maintenance of Way, rules and wages); Brotherhood of Railway Signalmen (rules and wages); International Association of Machinists & Aerospace Workers (rules and wages); Joint Council of Carmen, Helpers, Coach Cleaners (Rules); Brotherhood of Locomotive Engineers (rules and wages); United Transportation Union (Engine Attendants, rules and wages); and the RYA (Yardmasters, rules and wages) are being negotiated directly by Amtrak.

In the case of rules negotiations, Amtrak anticipates very little savings will be produced as most of the rules were extensively revised in the 1982 negotiations. Those rules changes in conjunction with Amtrak wage rates, that are currently 12 percent below the industry average, allow us the flexibility needed to operate efficiently and economically.

Agreements have been concluded settling all outstanding Section 6 Notices with the American Federation of Railroad Police, Inc., United Transportation Union (Auto Train) and the UTU Stewards. The United Transportation Union (Northeast Corridor, conductors and trainmen) agreement is currently undergoing union ratification procedures.

EXPENSES NOT REQUIRING AN APPROPRIATION

Mr. **Lehman**. Please update for the record the information depicting expenses not requiring appropriation found on page 606 of last year's hearing record.

[The information follows:]

EXPENSES NOT REQUIRING OPERATING APPROPRIATIONS

[In millions of dollars]

	Fiscal year 1985	Estimate fiscal year 1986	Projection fiscal year 1987
Depreciation	167.9	151.4	161.1
Interest			
Labor protection	2.0	2.0	2.0
Total	169.9	153.4	163.1

DEPRECIATION EXPENSES

Mr. **Lehman**. Please explain the difference between the $174.9 million you estimated for 1986 depreciation expenses as shown on page 523 of last year's hearing record, and actual depreciation expenses of $153.4 million as reported on page 2 of your justifications.

[The information follows:]

The decrease in the depreciation from the original estimate to the current estimate is due to a reevaluation of the depreciable life of stations and office buildings. The change was from 18 to 40 years and is in line with other operating railroad's practice.

INFLATION RATE PROJECTIONS

Mr. **Lehman**. On page 2 you show a $60 million increase for inflation. What inflation rate are you assuming between Fiscal Years 1986 and 1987?

Also, what was your actual inflation rate in fiscal year 1985, and what are you projecting for fiscal year 1986?

Mr. **Claytor**. Well, we are anticipating a rate of inflation for 1987 of 4.1 percent which is consistent with the Administration's forecast. Our actual rate of inflation for 1985 was 3.6 percent and we are currently estimating Fiscal Year 1986 at 3.3.

Mr. **Lehman** That is pretty good. I hope you are right.

Mr. **Claytor**. Well, we are really following the best information we get and hope we are right, too.

Mr. LEHMAN. Please provide an inflation cost breakdown for the record similar to that provided on page 607 of last year's hearing record for fiscal years 1985, 1986 and 1987.

[The information follows:]

INFLATION PROJECTION

	Fiscal year 1985		Fiscal year 1986		Fiscal year 1987
	Actual (percent)	Grant req. estimate (percent)	Revised estimate (percent)	Grant req. estimate (percent)	Grant req. estimate (percent)
Railroad labor[1]	2.5		3.3		4.1
Amtrak labor[1]	2.5		3.3		4.1
Fuel and power	−0.4	7.0	−2.0	3.0	1.5
Material	4.8	9.1	4.1	6.1	5.6
Other	3.9	6.4	3.1	4.7	4.4
Composite	3.6	6.9	3.3	4.3	4.1
Dollar impact (in millions)	49.2	94.3	44.3	62.7	60.0

[1] Assumes union settlement consistent with UTU settlement implemented November 1, 1985.

WAGE/PRICE PROJECTIONS

Mr. LEHMAN. Please provide for the record a breakdown of your fiscal year 1987 estimate of wage/price increases similar to what appears on page 607 of last year's hearing record.

[The information follows:]

[In millions of dollars]

	Cost base	Inflation percent	Inflation impact
Labor/benefits[1]	890	4.4	39.0
Fuel and power	110	1.5	1.6
Materials	97	5.6	5.4
Food/on board supplies	35	5.0	1.8
Other	275	4.4	12.2
Noninflated	53	0.0	0.0
Total	1,460	4.1	60.0
Electricity	45	4.3	1.9
Diesel fuel	60	−0.5	−0.3
Gasoline/mixed fuel	5	−0.6	.0
Total	110	1.5	1.6

[1] Assumes union settlement consistent with UTU settlement implemented November 1, 1985.

TRAIN OPERATING EXPENSES

Mr. LEHMAN. Please update for the record the train operating expense data found on page 608 of last year's hearing record by adding a 1987 column. Please ensure this is in current dollars.

[The information follows:]

TRAIN OPERATIONS

[In millions of dollars]

	Actual FY 1985	Projected	
		FY 1986	FY 1987
Transportation	159.7	155.9	135.1
Block and tower	15.4	17.0	17.0
Dispatching	5.1	4.5	4.5
Road/yard crews	144.8	151.5	163.9
Yard operations	3.7	3.2	4.1
Joint terminals	8.3	5.2	4.8
Performance/avoidance	27.0	29.3	26.3
Train operations support	30.3	32.8	36.2
Total	394.3	399.4	391.9

Note.—Fiscal year 1987 is in current fiscal year 1986 dollars.

CONTRACT RAILROADS

Mr. **Lehman**. You contract with 23 different railroads to operate your trains across the country. Over the years there have been disagreements between Amtrak and some of these railroads. But for the last three years you have told us that your relationships have been quite good.

Is that still the case? If not, which ones give you the most trouble?

Mr. **Claytor**. Well, I would say that we are having no real trouble from any railroad. What happened a few years ago, we were involved in lots of litigation with several railroads, including Southern Pacific, Illinois Central, Missouri Pacific and others.

And once those were settled and Amtrak came to be accepted as a genuine operating railroad, our relationship improved rapidly.

When I came with Amtrak, I knew all of these fellows, I had served on the AAR board of directors for a number of years and my first objective was to say we are partners. We actually produce some profit for your fellows. And we can help you in all kinds of ways and you need to help us and we ought to work together as partners.

And that has been the general approach of practically all the railroads and we are doing well with that. It is continuing to do well and I am going to keep on pushing it that way.

CONTRACT RAILROAD PAYMENTS

Mr. **Lehman**. How do you negotiate the non-personnel fees charged by your contract railroad? And have you attemtped to renegotiate some of these fees due to your tenuous financial situation?

Mr. **Claytor**. Well, of course, most of this is covered in the written contracts. Now, what we did when this budget crisis came upon us was to go to each of the railroads and say are there not functions that you are now performing and that we are paying you for that we do not need, that we can do without and save us money?

And we had a very good response as a result of that including agreements made with the Canadian National and we have saved

$4 million in money that we pay to railroads and it has been a very cooperative operation.

Mr. **Lehman**. Detail that for the record, please?

Mr. **Claytor**. Yes.

[The information follows:]

The only carriers which did not participate in the reductions were Southern and D&RGW. Following is a summary of negotiated reductions:

Railroad:	*Reductions*
Chessie System	$35,000
RF&P	169,848
Seaboard System	294.410
GTW	77,388
Milwaukee	128,172
Burlington Northern	656,440
ICG	183,800
Union Pacific	65,137
ATSF	111,216
SP	934,497
Delaware & Hudson	27,691
Conrail	454,511
Central Vermont	37,188
VIA	35,250
M-K-T	9,102
	3,219,650
Additional reductions: CN-Montrealer Agreement (U.S. dollars)	788,300
Grand total negotiated reductions (U.S. dollars)	4,007,950

Mr. **Lehman**. Please update the data on contract railroad payments found on page 609 of last year's hearing record. Please show columns for 1986 and 1987.

[The information follows:]

RAILROAD BUDGETS
FY87 FEDERAL GRANT JUSTIFICATION FACT SHEET
COSTS PER TRAIN MILE

RAILROAD	FY 86 $BUDGET (MILLIONS)	FY 87 $BUDGET (MILLIONS)[2]	FY86 TRAIN MILES (000)	FY87 TRAIN MILES (000)	<--FY86 VS COSTS PER TRAIN MI.	FY87----> COSTS PER TRAIN MI.
ATCHISON TOPEKA SF	30.3	30.3	2847	2847	10.64	10.64
BOSTON & MAINE	1.1	1.1	90	90	12.22	12.22
BURLINGTON NORTHERN	33.4	32.1	2874	2760	11.62	11.63
BALTIMORE & OHIO	1.5	1.5	227	227	6.61	6.61
CANADIAN PACIFIC	0.6	0.6	-	-	-	
CANADIAN NAT.-EAST	1.0	1.0	38	38	26.32	26.32
CHESAPEAKE & OHIO	4.7	4.7	470	470	10.00	10.00
CENTRAL VERMONT	1.5	1.5	104	104	14.42	14.42
DELAWARE & HUDSON	1.1	1.1	158	158	6.96	6.96
DENVER & RIO GRANDE	3.9	3.9	416	416	9.38	9.38
GRAND TRUNK WESTERN	1.0	1.0	115	115	8.70	8.70
ILLINOIS CENTRAL GULF	12.7	12.4	1524	1490	8.33	8.32
MISSOURI,KANSAS & TEXAS	0.2	0.2	12	12	16.67	16.67
MISSOURI PACIFIC	6.4	6.4	679	679	9.43	9.43
MILWAUKEE ROAD	5.3	5.3	494	494	10.73	10.73
METRO TRANSIT AUTH.	6.4	6.4	-	-	-	—
RF&P [1]	4.1	4.1	453	453	9.05	9.05
SEABOARD COAST LINE [1]	30.4	30.4	2719	2719	11.18	11.18
SOUTHERN PACIFIC	25.8	25.8	1871	1871	13.79	13.79
SOUTHERN RAILWAY	7.4	7.4	851	851	8.70	8.70
UNION PACIFIC	12.9	12.9	1328	1328	9.71	9.71
CONRAIL-OFF	31.1	30.0	3723	3594	8.35	8.35
TOTAL	$222.8	$220.1	20993	20716	10.61	10.62

[1] INCLUDES AUTO TRAIN

[2] THESE AMOUNTS WILL BE REDUCED AS TRAIN AND ENGINE EXPENSES ARE TRANSFERRED TO THE DIRECT AMTRAK BUDGET.

DEFERRED EQUIPMENT MAINTENANCE

Mr. **Lehman**. On page 4 you state that your budgeted $5.4 million increase for maintenance of equipment is necessary to overhaul some of your Heritage and Superliner cars. I believe you deferred some of this work in fiscal year 1986. What would be the impact of deferring it again in 1987?

Mr. **Claytor**. Well, it would be loss of business and revenue. We would not defer it in 1987 if it involved safety but much of this is a matter of providing decent service, and if the car starts riding rough and it is uncomfortable and the carpet is all worn out and the seats are dirty and torn, we lose the business and that means revenue.

So, that is why it is a very bad thing to do.

Mr. **Lehman**. Some Amtrak passenger trains are riding over the other railroads, which basically haul freight—you go fast and they go slow. Are you having any trouble making them keep up the kind of roadbed conditions that enable you to operate your trains on their freight beds?

Mr. **Claytor**. For the most part no because we have contracts that require them to maintain the same level of service. And in the early days, we had to have a number of lawsuits with several railroads that would force them to do that.

We won those lawsuits and we did bring those railroads up to snuff and wherever we find the quality of the roadbed deteriorating, we can test it with our sophisticated computer test cars.

We run out over these railroads and then we go to the railroad and say, look, this is not satisfactory and we have got to fix it and generally speaking we get results.

MAINTENANCE OF EQUIPMENT EXPENDITURES

Mr. **Lehman**. Please update for the record the maintenance of equipment ratios found on page 611 of last year's hearing record.

[The information follows:]

	Maintenance of equipment percent of total expense
CY 71	23
CY 72	19
TRANS. (January–June 73)	17
FY 74	18
FY 75	20
FY 76	25
TQ 76 (July–September)	25
FY 77	30
FY 78	29
FY 79	30
FY 80	31
FY 81	28
FY 82	25
FY 83	24
FY 84	24
FY 85	24
FY 86 estimate	24
FY 87 projection	24

MAINTENANCE FACILITY DATA

Mr. LEHMAN. Please also update the maintenance facility data found on pages 611 and 612 of last year's hearing record.

[The information follows:]

	FY87 estimate (millions)	Man-year estimate
Beech Grove	$60.6	1,150
Boston	9.9	236
Chicago	37.2	757
Detroit	0.7	19
Fort Worth	0.4	6
Hialeah	1.3	4
Jacksonville	0.8	17
Kansas City	0.7	16
Lorton	1.6	41
Los Angeles	20.6	396
New Haven	22.5	283
New Orleans	7.6	148
New York	30.1	731
Niagara Falls	1.1	21
Oakland [1]	0.3	
Philadelphia	20.9	351
Rensselaer	13.2	231
St. Louis	0.9	23
St. Paul	0.4	10
San Antonio	0.3	8
Sanford	3.4	75
Seattle [1]	1.2	
Tampa	2.9	42
Washington	25.8	600
Wilmington	41.0	653
Subtotal	305.4	5,818
Railroad and terminal companies	44.5	
Total	349.9	5,818

[1] Materials only, labor provided by railroad or terminal company.

MAINTENANCE OF WAY

Mr. LEHMAN. On page 5 you show a $5.8 million increase for maintenance of way expenses. Most of this work is on the Northeast Corridor. Why can't this line item be held at last year's level—after all, the Corridor is in excellent shape, is it not?

Mr. CLAYTOR. It is in excellent shape but it will not stay in excellent shape if regular maintenance is not done because of the heavy traffic on it. A railroad that has nothing running over it will stay in pretty good shape in the absence of floods or something.

If you have got very heavy traffic, it goes down very rapidly and you have got to have continuous maintenance. Now, as long as the NECIP project was in full swing, much of what would be ordinary maintenance in the Northeast Corridor sort of got shifted to the NECIP construction gangs and we did not have to pay for it.

Now, the NECIP construction is essentially over and we have got to pick up all of that maintenance with our own forces. The maintenance is going to increase over what it was during NECIP construction days and if we do not keep it up, the result is—we are not ever going to let it get to the point where the result is unsafe—but the result will then be, first a rough ride, and then we have got to slow the trains down and then we start losing all of the business.

And I am not going to let that happen if there is any way to avoid it.

MAINTENANCE OF WAY EXPENDITURES

Mr. LEHMAN. Please update the maintenance of way expense tables on page 611 of last year's hearing record.

[The information follows:]

Northeast Corridor maintenance of way

Fiscal year:	*(Millions)*
1978	$58.1
1979	65.7
1980	83.3
1981	84.7
1982	91.9
1983	95.7
1984	116.6
1985	122.5
1986 estimate	125.6
1987 projection	131.4

Fiscal year 1987 expenses are expressed in fiscal year 1986 dollars.

FISCAL YEAR 1987 MAINTENANCE OF WAY EXPENSES

[Dollars in millions]

States	Comm. and signals	Bridges and buildings	Electric traction	Track	Total
California				1.1	1.1
Connecticut	2.4	3.5		8.0	13.9
District of Columbia	0.1		0.1	0.7	0.9
Delaware	1.0	0.8	1.0	3.0	5.8
Illinois	0.1			2.4	2.5
Louisiana	0.1	0.3		1.0	1.4
Massachusetts	1.6	1.2		2.0	4.8
Maryland	4.4	2.1	2.9	12.0	21.4
Michigan	0.4			1.9	2.3
New Jersey	4.0	2.3	3.8	8.9	19.0
New York	3.7	8.2	3.3	3.6	18.8
Pennsylvania	11.0	12.6	6.7	23.3	53.6
Rhode Island	1.2	0.7		0.9	2.8
Railroads				13.1	13.1
Total	30.0	31.7	17.8	81.9	161.4

Railroads cannot be identified to specific states.
Support and overhead costs have been allocated to the projects identified above.

ON-BOARD SERVICES

Mr. LEHMAN. On page 6, would you explain how you can actually reduce your on-board services costs by $700,000 between fiscal year 1986 and 1987?

Is that because you are dealing with it yourself instead of contracting out for food service?

Mr. CLAYTOR. No, indeed. As a matter of fact, there is a law against that. We cannot do that any way, but we would not do it even if we could. It would not save any money and it would probably cost us money. No one would contract to serve food on the train for what they could get for selling food. We would have to pay them a tremendous fee to do it and by the time that we paid them all the fees for doing it, it would cost more than it would cost us to do it ourselves.

Mr. **Lehman**. Well, I understood you said that you were saving money on your food service because you no longer contracted with Marriott, and do the food service yourselves?

Mr. **Claytor**. Well on the Auto Train which is a new service, we started out, the old Auto Train contracted with Marriott to do that and we did the same thing for starters. And after some experience, we decided that we could put our own crews on there and do a better job for less money and we have done that.

Now, how do we save the money?

Basically we save money by having fewer people on board the trains. Now, we are trying to see if we cannot run with one coach attendant on low-level cars for every three cars instead of two and gradually reduce the number of people. We are also experimenting with reducing the total number of train managers, and train chiefs. As we take over the off-corridor crews, we may be able to do away with some chiefs, as I mentioned this morning. That is something that we have to watch very carefully and try it out.

But we are reducing people on the trains, to the extent we can, without letting the service deteriorate. And I think that we can save this much money by doing that.

Mr. **Lehman**. Please update for the record the food and beverage cost data shown on page 613 of last year's hearing record.

[The information follows:]

[In millions of dollars]

	Food and beverage comparison	
	Revenue	Expense
Fiscal year 1976	$40.8	$54.9
Transition quarter	11.7	15.8
Fiscal year:		
1977	46.8	61.7
1978	46.2	64.0
1979	57.7	76.0
1980	64.0	85.5
1981	76.3	90.7
1982 [1]	57.8	57.8
1982 [1]	70.3	70.3
1982 [1]	76.7	76.7
1982 [1]	78.9	78.9
1986 estimate [1]	80.5	80.5
1986 projection [2]	83.6	83.6

[1] Includes allocation of up to 10% of Transportation Revenues for food and beverage pursuant to House and Senate Appropriations Committee Reports.

[1] Fiscal year 1987 expenses are in estimated fiscal year 1987 dollars for consistency in comparison to revenue.

UNMANNED STATIONS

Mr. **Lehman**. With regard to your $107.4 million estimate for station costs on page 7, have you selected the stations you will close or "unman" to achieve your budgeted savings of $300,000?

If so, how many are there and where are they?

[The information follows:]

No, we have not yet identified which stations will be unmanned to achieve the projected cost savings. Stations will be unmanned based upon our ongoing review of station revenue/expense data and as underlying carriers continue to consolidate their operations.

STATION CLOSINGS

Mr. LEHMAN. What stations have you closed in fiscal year 1986, and do you plan additional closings this year?

[The information follows:]

We have removed or not replaced staffing at the following stations during FY 1986. These stations are opened/closed by caretakers, and passengers obtain tickets through local travel agencies or from Amtrak through our ticket-by-mail or prepaid order systems. Additional stations will be unstaffed during FY 1986 based upon our ongoing review of station revenue/expense data and as underlying carriers continue to consolidate their operations.

STATION CLOSINGS—FY 1986

AMTRAK REQUEST

(R) Canton, MS—2/28/86.
(R) Provo, UT—1/10/86.
(R) Sanderson, TX—10/25/85.
(R) Helper, UT—10/26/85.
(A) Barstow, CA—1/15/86.
(A) Erie, PA—3/18/86.
(A) Camden, SC—3/28/86.
(R) Railroad-staffed station.
(A) Amtrak-staffed station.

RAILROAD REQUEST

(R) Streator, IL—10/27/85.
(R) Marceline, MO—10/7/85.
(R) Las Vegas, NM—effective 4/30/86.
(R) Raton, NM—effective 4/30/86.

STATION PERSONNEL WAGE RATES

Mr. LEHMAN. Please update the data on wage rates for your station personnel found on page 614 of last year's hearing record.

[The information follows:]

WAGE RATE—STATION SERVICE PERSONNEL[1] [2]

[In thousands of dollars]

	Estimated fiscal year—					
	1985[1]		1986[1]		1987[1]	
	Entry	Full	Entry	Full	Entry	Full
Ticket clerk	$19.7	$24.6	$19.7	$24.6	$19.7	$24.6
Baggageman	18.1	22.9	18.1	22.9	18.1	22.9
Red cap	16.9	21.1	16.9	21.1	16.9	21.1
Usher/gateman	17.5	21.9	17.5	21.9	17.5	21.9

AVERAGE WAGES EARNED [2]—STATION PERSONNEL

[In thousands of dollars]

	Estimated, fiscal year—		
	1985	1986[1]	1987[1]
Ticket clerk	$24.5	$24.7	$24.8
Baggageman	22.8	23.0	23.1
Red cap	21.2	21.4	21.5

AVERAGE WAGES EARNED [2]—STATION PERSONNEL—Continued

[in thousands of dollars]

	Estimated, fiscal year—		
	1985	1986[1]	1987[1]
Usher/Gatemen	22.0	22.2	22.3

[1] Wage rates are subject to current labor negotiations.
[2] Excludes overtime and benefits.

STATION SERVICES

[In millions of dollars]

	Fiscal year—		
	1985 actual	1986 estimate	1987 projection
Ticketing	$34.4	$34.0	$33.9
Baggage/Redcap	16.3	16.5	16.4
Operations	36.3	37.1	37.1
Support[1]	17.8	20.1	20.0
Total	104.8	107.7	107.4

[1] Includes vacation and holiday pay for all station employees.
Station Operations consists of payroll costs for janitors and station laborers, station rent, and building maintenance.
Station Support consists of managerial and supervisory payroll costs for all stations and vacation and holiday pay for all station employees.

STATION RENOVATION

Mr. LEHMAN. Please provide for the record a cost breakdown of the stations you will renovate in fiscal year 1986 and in fiscal year 1987 similar to what appears on pages 615 and 616 of last year's hearing record.

[The information follows:]

Amtrak has identified the following stations that are in need of renovation and we will do what work we can within the present budget constraints.

STATION/1986	AMTRAK FUNDING	OTHER	TOTAL
Atlanta, GA	$ 250,000		$ 250,000
Ft. Wayne, IN	$ 250,000		$ 250,000
Suburb.Stat./Phila, PA	$ 150,000		$ 150,000
Springfield, IL	$ 250,000	$ 250,000	$ 500,000
Salt Lake City, UT	$ 2,466,000		$ 2,466,000
Syracuse,NY	$ 607,000		$ 607,000
Penn Station, NY, NY	$16,901,000		$16,901,000
Detroit, MI	$ 900,000	$3,750,000	$ 4,650,000
Washington, DC	Development Project		
Chicago, IL	$ 40,000		$ 40,000
Tampa, FL	City/Developer		
Utica, NY	$ 36,700		$ 36,700
Albany, NY	$ 225,000	$ 225,000	$ 450,000
Kewanee, IL	$ 16,300	$ 24,700	$ 41,000
San Marcos, TX	$ 24,850		$ 24,850
Fargo, ND	$ 99,770		$ 99,770
30th St., Phila, PA	$ 3,000,000		$ 3,000,000
Rhinecliff, NY	$ 162,500	$ 162,500	$ 325,000
Berkley, CA	$	$ 68,600	$ 68,600
Gilman, IL	$	$ 67,000	$ 67,000
Johnstown, PA	$ 99,750		$ 99,750
Elizabethtown, PA	$ 11,311	$ 18,239	$ 29,550
Los Angeles, CA	$	$ 178,000	$ 178,000
Oxnard, CA	$	$3,000,000	$ 3,000,000
Truckee, CA	$	$ 825,000	$ 825,000
Southern Pines, NC	$ 22,630		$ 22,630
Hamlet, NC	$ 9,000	$ 9,000	$ 18,000
Macomb, IL	$ 5,500	$ 5,500	$ 11,000
Quincy, IL	$ 45,000	$ 62,000	$ 107,000
W. Quincy, MO	$ 6,500	$ 6,500	$ 13,000
Bloomington, IL	$ 6,000	$ 6,000	$ 12,000
Lincoln, IL	$ 9,000	$ 9,000	$ 18,000
Homewood, IL	$ 14,000	$ 14,000	$ 28,000
Rantoul, IL	$ 14,000	$ 34,000	$ 48,000
Galesburg, IL	$ 4,000	$ 4,000	$ 8,000
Champaign, IL	$ 13,000	$ 24,000	$ 37,000
Plano, IL	$ 3,500	$ 3,500	$ 7,000
Mendota, IL	$ 4,500	$ 4,500	$ 9,000
Cairo, IL	$ 4,000	$ 4,000	$ 8,000
Princeton, IL	$ 10,000	$ 10,000	$ 20,000
Alton, IL	$ 13,500	$ 13,500	$ 27,000
Effingham, IL	$ 8,500	$ 8,500	$ 17,000
Mattoon, IL	$ 8,500	$ 8,500	$ 17,000
Total	$25,691,311	$8,795,539	$34,486,850

STATION/1987	AMTRAK FUNDING	OTHER	TOTAL
Little Rock, AR	$ 100,000		$ 100,000
Pittsburgh, PA	Developer		
Memphis, TN	Developer		
St. Louis, MO	Developer		
Joliet, IL	$ 100,000		$ 100,000
Orlando, FL	$ 500,000		$ 500,000
Charlottesville, VA	$ 250,000		$ 250,000
30th St., Phila, PA	$2,000,000		$2,000,000
Simi Valley, CA	$	$100,000	$ 100,000
Denair, CA	$	$ 50,000	$ 50,000
Wasco, CA	$	$ 62,000	$ 62,000
Total	$2,950,000	$212,000	$3,162,000

MARKETING AND RESERVATIONS

Mr. **Lehman**. On page 8, you are proposing to spend $127.7 million for marketing and reservations in fiscal year 1987. Last year you told us that your marketing department was your strongest area. Yet your ridership was budgeted to grow by only 2 percent—from 20.9 million to 21.4 million riders.

Do you feel that you are now tapping all possible markets through your marketing program? If so, why are we not seeing larger ridership increases?

If not, what markets need to be tapped?

Mr. **Claytor**. Yes. Basically increasing the ridership, as I mentioned before, is only one aspect of marketing. We are covering, I think, all the markets about as well as we can. Marketing, of course, and sales is fundamentally a situation where its direct effectiveness, its immediate effectiveness is a function of how much money you spend on advertising.

And we spend as much as we feel we can afford to. We have tried upping and lowering it and this last year, we tried a very heavy advertising program early in the fiscal year, tapering it off and hoping that the early advertisements would carry over and we would not have to keep it up and that has worked reasonably well.

It has helped some, but fundamentally the rather small increase in ridership is not the test here. In the first quarter for 1986, for instance, we increased our revenue passenger miles 15 percent and our revenue 11 percent over the same quarter for the year before and marketing really did that.

And you have got to remember that this is being done at a time that is just as bad as it was two or three years ago from the standpoint of the cut-rate air competition, with a number of airlines charging rates on competing routes that are genuinely below their costs in order to build up their traffic and reputation. And with that, even in spite of that, our revenues are increasing. I think that our revenues in the first quarter increased more than I think the revenues did of almost any of the airlines.

We have done it because we feel that we have a unique product to sell and we are trying to get the word over that we really have that and no one else does.

Mr. **Lehman**. If I can repeat it right, the slogan is "Dinner will be served in 30 miles." And that sticks in your mind.

Mr. **Claytor**. Right.

MARKETING AND RESERVATION EXPENSES

Mr. **Lehman**. Please update the marketing and reservations expense data on page 617 of last year's hearing record by adding a 1987 column.

[The information follows:]

The Marketing and Reservation expenses for FY 1985 through FY 1987 broken down according to the functional areas requested are as follows:

MARKETING AND RESERVATION EXPENSES

[In millions of dollars]

	Fiscal year—		
	1985	1986	1987
Sales	$9.7	$10.4	$9.9
Advertising and sales promotion	33.3	31.4	30.9
Reservations	41.8	41.1	37.2
Commissions	22.6	27.4	31.3
Support	17.8	18.4	18.4
Total	125.2	128.7	127.7

Note.—FY 1987 levels are in constant FY 1986 dollars.

GENERAL SUPPORT EXPENSES

Mr. **Lehman**. Please update the general support expense table found on page 617 of last year's hearing record, by adding a 1986 column.

[The information follows:]

[In millions of dollars]

	Fiscal year—		
	1985	1986	1987
Computer systems	$39.3	$34.0	$32.3
Police and security	17.0	16.9	16.0
Revenue account/field payroll operations	9.1	12.0	11.4
Claims	3.5	3.5	3.3
Personnel/training	9.0	8.4	8.0

DEPRECIATION COSTS

Mr. **Lehman**. Please provide for the record a depreciation cost table for fiscal years 1986 and 1987 similar to that found on pages 617 and 618 of last year's hearing record. Please also include a description of the method of depreciation you employ.

[The information follows:]

DEPRECIATION COSTS

[In millions of dollars]

	Fiscal year 1986 projection			Fiscal year 1987 projection		
	Units	Value	Depreciation	Units	Value	Depreciation
Total depreciation			151.4			161.1
Analysis by account						
Road		785.2	66.6		1035.2	75.3
Shop and machinery		11.0	0.8		11.0	0.8
Amfleet I and II	638	373.1	13.1	638	373.1	13.1
Locomotives	391	358.3	15.7	391	358.3	15.7
Conventional passenger cars	768	175.3	19.7	768	186.3	20.2
Capitoliners	61	61.3	8.0	61	66.3	8.3
Rail diesel cars	3	0.7	0.2	3	0.7	0.2

DEPRECIATION COSTS—Continued

[In millions of dollars]

	Fiscal year 1986 projection			Fiscal year 1987 projection		
	Units	Value	Depreciation	Units	Value	Depreciation
Turbine	65	65.0	8.9	65	67.2	9.1
Superliners	283	312.1	11.7	283	312.1	11.7
other (including research and development)		43.1	6.7		43.1	6.7

[1] Projection for asset values based on estimated mid-year levels at 4/1/86 and 4/1/87.

Note.—The asset costs are depreciated on a composite straight-line basis over their estimated useful lives as determined be the company based on guidelines established by the Interstate Commerce Commission.

GENERAL AND ADMINISTRATIVE EXPENSES

Mr. LEHMAN. On page 12 you have budgeted $28.7 million for general and administrative expenses. On a percentage basis, what salary increases for your management personnel have you budgeted for 1987—and have you considered a salary freeze?

Mr. CLAYTOR. Yes, let us broaden that a little bit. We had a salary freeze in 1985. We had no increase whatever for our management salaries in 1985. And as we moved into 1986, and after the early wage agreements were settled for the new contracts, with modest increases, but definite increases, I felt I had to do something for our management people. And what we did then was to, in December, we put in a 4 percent, covering the inflation cost of the previous year, a 4 percent bonus, in effect, payable quarterly during the year 1986 and not an increase in salary. So that all the things, benefits and other things related to salaries were not increased, just this bonus. Basically a cost of living increase and it was across the board. It was not selective.

What we do—we obviously are not going to do anything else in Fiscal Year 1986. But what we can do in 1987, I hope, is to return to our traditional system of having a basically, inflation-sized, at least, merit increase for everybody. Now, if we do not do that, we are going to put ourselves out of business by slow death instead of by sudden termination.

Mr. LEHMAN. What is an inflation-sized merit increase?

Mr. CLAYTOR. A merit increase——

Mr. LEHMAN. I know what that is, but what do you mean by an inflation-sized merit increase?

Mr. CLAYTOR. The amount assigned to each department, that they can distribute among their members on a merit basis, is a percentage equal to the past inflation.

Mr. LEHMAN. Okay, now I understand.

Mr. CLAYTOR. If we do not do that, we are in trouble. You see all of our salaries above the middle-range are from 30 to 100 percent below our competition. And what happens is we lose some of our very best people—our vice president of labor relations has just gone over to the AAR. He is the guy who put together all of these agreements for us. Our vice president of sales has gone to be the head of British Airways North American operations for two or three times as much as we had paid him. And we are managing to hold our good people but I have got to at least do something or I am going to lose them all. And when you start losing all of your talent, that is really all we have. We will then put ourselves out of business nicely. So this is the problem I have. I am going to try to do a merit increase early in 1987, if I can. I have got to try to wait and see where we stand. If we cannot do it, everybody will understand we just plain cannot do it. But it would be a very bad thing and bad for the future of the company to have to struggle with that much longer.

Mr. LEHMAN. What average salary increase was given to your management personnel in fiscal year 1986?

[The information follows:]

Amtrak management employees received no salary increase during FY85.

During FY86 management employees will receive payments equal to 4 percent of their base salaries. These are one-time payments and will not increase base salaries.

Mr. LEHMAN. Please provide for the record an estimate of the fiscal year 1987 savings that could be achieved by (1) a management salary freeze; and (2) a 5 percent reduction in management salaries.

[The information follows:]

It is not clear at this time that Amtrak can afford any FY 87 increase in management salaries. If one were proposed, it would cost approximately $4 million. In view of the contractual increases expected to be guaranteed to our nonmanagement employees and the adverse impact that current salary freezes have had on employee retention I strongly urge that the Congress not mandate a pay action.

A 5% management salary reduction would save approximately $5 million.

Mr. LEHMAN. Please also update for the record the tables on Amtrak employment costs and general administration expenses found on pages 619 through 621 of last year's hearing record.

Please break down the "line/staff" table by "agreement" and "non-agreement" personnel as well.

[The information follows:]

	FISCAL YEARS ($ Millions)		
	Actual	Estimate	
	1985	1986	1987
Planning & Administrative	21.4	20.5	19.6
Legal Services	7.9	6.7	6.4
Corporate Management	1.3	1.4	1.3
Communication & Liaison	1.7	1.6	1.4
Total	32.3	30.2	28.7

DMZ 3/19/86

AMTRAK EMPLOYMENT

	FY85		FY86 EST.		FY87 EST.	
	LINE	STAFF	LINE	STAFF	LINE	STAFF
MANAGEMENT	1,680	796	1,709	786	1,710	746
AGREEMENT	16,040	114	16,296	110	17,122	107
TOTAL	17,720	910	18,005	896	18,832	853

MANAGEMENT EMPLOYEES
FY86 AVERAGE SALARY BY GRADES

		RANGE			AVERAGE
GENERAL TITLE	GRADE	MINIMUM	MIDPOINT	MAXIMUM	SALARY
PRESIDENT				85,000	85,000
VICE PRESIDENT	EXEC			86,216	73,800
AVP (LEVEL I)	96	63,100	66,500	69,900	64,700
AVP (LEVEL II)	95	54,900	61,700	68,500	64,400
SR. DIRECTOR (LEVEL I)	94	48,900	58,200	67,500	58,600
SR. DIRECTOR (LEVEL II)	93	44,500	55,600	66,800	58,400
SR. DIRECTOR (LEVEL III)	92	42,700	53,300	64,000	53,100
DIRECTOR (LEVEL I)	91	41,000	51,200	61,400	51,700
DIRECTOR (LEVEL II)	90	39,400	49,300	59,100	50,600
DIRECTOR (LEVEL III)	89	38,000	47,500	57,000	49,400
DIRECTOR (LEVEL IV)	88	36,700	45,900	55,100	46,400
DIRECTOR (LEVEL V)	87	35,600	44,500	53,400	43,100
MANAGER (LEVEL I)	86	34,500	43,200	51,800	44,400
MANAGER (LEVEL II)	85	33,600	42,000	50,400	42,400
MANAGER (LEVEL III)	84	32,700	40,900	49,000	39,500
MANAGER (LEVEL IV)	83	31,900	39,900	47,900	38,600
MANAGER (LEVEL V)	82	31,500	39,400	47,000	36,800
MANAGER (LEVEL VI)	81	29,500	36,900	44,300	34,800
GEN. SUPV/SR ANAL(LEVEL I)	80	27,700	34,600	41,500	33,200
GEN. SUPV/SR ANAL(LEVEL II)	79	26,000	32,600	39,100	29,900
SUPV/ANALYST (LEVEL I)	78	24,600	30,700	36,900	29,500
SUPV/ANALYST (LEVEL II)	77	23,200	29,000	34,900	28,300
ADMINISTRATIVE (LEVEL I)	76	22,200	27,800	33,300	27,500
ADMINISTRATIVE (LEVEL II)	75	20,800	25,500	30,200	26,200
SENIOR CLERICAL	74	19,500	23,400	27,400	24,400
CLERICAL	73	18,300	21,500	24,700	23,400

NOTE 1: SALARY RANGES REFLECT THOSE IN USE AS OF DECEMBER 1, 1985.

NOTE 2: GRADE CHANGES EFFECTIVE OCTOBER 1, 1984.

AMTRAK
EEO SERVICES
WORK FORCE COMPOSITION BY JOB GROUP
AS OF 12/31/85

	Total	White Female		Minorities	
	Employees	Total	Percent	Total	Percent
1 Managerial	1,369	125	9.1%	204	14.9%
2 Admin/Technical Prof.	954	249	26.1%	263	27.6%
3 Technician	95	12	12.6%	35	36.8%
4 Sales & Ticket Agents	2,034	648	31.9%	549	27.0%
5 Secretary/Clerical	1,257	600	47.7%	404	32.1%
6 Craftworkers	7,908	55	0.7%	1,528	19.3%
7 Operative/Apprentice	1,632	34	2.1%	372	22.8%
8 Laborer	966	16	1.7%	431	44.6%
9 Cleaning, Protective & On Board workers	4,055	378	9.3%	2,420	59.7%
Grand Total	20,270	2,117	10.4%	6,206	30.6%

Mr. **Lehman**. You have a corporate goal of reducing administrative costs by 5 percent. How do you plan to achieve this goal?

Mr. **Claytor**. Well, we do that by continuing the process we have been working on for a long time, which is examining every department and what it is doing and why we cannot do it with fewer people and why we cannot get by without some of the functions. Also not filling vacancies, and the like.

We are just going to continue that. I think any company that does not have a permanent sort of rachet on its administrative costs will have the administrative costs either stay the same, when they do not need to, or go up rather than down.

Mr. **Lehman**. I understand the Joint Labor-Management Productivity Council sent you a proposal to initiate an experimental program of cash incentive awards for employees who submit cost saving suggestions. They say an employee ought to receive an award of 10 percent of the savings they suggest—up to a maximum of $10,000. What do you think of this proposal?

Mr. **Claytor**. Well, we are looking at that. Lots of companies have a thing like that. Now, that is not just a general bonus that would go to a group of people if they seemed to be doing a better job.

This is individual incentive. If somebody comes up with a new gadget that saves the company $500,000 a year, we plan to give him some kind of a cash bonus for that. It is not just a general thing that if you guys do a good job and you make some kind of a contribution, we are going to give you some kind of distribution for it.

It is administratively difficult. You have got to make it fair. Most plans that I have dealt with have been successful in some ways, but always got a lot of criticism from somebody who said he really should have gotten a prize and this other guy who did not make as much of a contribution as he did got the prize instead of him. And it causes some dissention and this is the difficulty. But we are looking into it.

Mr. **Lehman**. This is nothing new for Amtrak. You have the same situation that other railroads and other industries have.

Mr. **Claytor**. That is right.

Mr. **Lehman**. Please expand your answer for the record.

[The information follows:]

Amtrak has had an aggressive cost reduction program ongoing for several years. It has been effective in holding Amtrak's FY86 expenses through February $2.7 million dollars below the same period in FY85 despite moderate inflation. We must, however, accelerate this process in order to become more self sufficient and to make funds available for investment in the future.

For the most part, cost reduction ideas developed to date have been devised by management personnel responsible for directing the most efficient operations. We need to get more employees involved in the effort.

The incentive idea developed by the Joint Labor Management Productivity Council Steering Committee in Chicago might be what Amtrak needs. It is structured to motivate employees who do not have cost savings as one of their responsibilities. For the most part, these are the people on the line performing the work. Quite often these personnel are in the best position to see the opportunities to reduce costs.

Like the many Council members who voted for the idea, I am concerned about its administrative feasibility and cost effectiveness. For that reason, I was pleased to learn that the Council is suggesting a limited pilot program in Chicago for six months. While this approach may delay the involvement of employees in other locations, it will insure that we don't commit on a nationwide basis to an untested program. It will also permit us to refine the details of the program procedure based on the results of the test.

REVENUE

Mr. **Lehman**. Please update for the record the revenue table on page 622 of last year's hearing record. Please drop the 1984 column and add a 1987 column.

[The information follows:]

REVENUE HISTORY

[Dollar amounts in thousands]

	Actual, fiscal year—		Estimate, fiscal year—			
	1985		1986		1987	
	Amount	Percent	Amount	Percent	Amount	Percent
Passenger related revenue	$587.8	71.2	$647.8	72.4	$675.1	71.1
Mail baggage and express	25.5	3.1	23.4	2.6	26.0	2.7
Real estate	20.6	2.5	26.1	2.9	30.0	3.2
State 403(b) subsidy	14.7	1.8	14.3	1.6	14.0	1.5
Freight operating	21.5	2.6	20.0	2.2	20.0	2.1
Commuter operating	55.7	6.7	63.5	7.1	64.0	6.7
Miscellaneous	100.0	12.1	99.9	11.2	121.0	12.7
Total	825.8	100.0	895.0	100.0	950.1	100.0

MISCELLANEOUS REVENUE

Mr. **Lehman**. On page 13, please explain what "miscellaneous" revenue is comprised of, and also please explain why this revenue increases from an estimated $24.7 million in fiscal year 1986 to $61 million in fiscal year 1987.

[The information follows:]

Miscellaneous revenue is comprised of the following elements 1) Maintenance of Equipment contract work, 2) Maintenance of Way contract work, 3) Transportation contract services such as train crews and yard services, 4) Safe Harbor revenue, and 5) other sundry revenue received from commission, sale of promotional goods, etc. The major reason for the increase in miscellaneous revenue from fiscal year 1986 to fiscal year 1987 is definitional in nature. In fiscal year 1986, safe harbor was included as enhancement revenue, while in fiscal year 1987 this revenue is included as an element of miscellaneous revenue.

CAPITAL PROGRAM

Mr. **Lehman**. On page 15 you have budgeted a $64 million capital program for 1987, of which $35 million would be funded from federal grants. Would you explain the impact if your total capital program were cut back to last year's level of $25 million?

Mr. **Claytor**. If we cut that back to $25 million with the other cut backs that we had, then I think that we would be in some real trouble. Looking at our revenue-cost ratio, we probably would not make the goals that I have stated. And when you start looking at the things, there are some things that we just have to do to keep the railroad running and that means some of the ongoing projects that we have got would probably have to be stalled. The prototype cars that we have got being finished, we expect to have those finished and get them in test operations, which is important for the future.

We have got all kinds of new developments we are working on. We are working on an advanced alternating current traction motor with a European company. It would be the first in this country. It would be a tremendous addition to our ability to do that. That is not very expensive but it is the kind of capital that you can just put on ice and not do it and then we do not move ahead with that. And we do not move ahead with the new—we have got new concrete tie turnouts and interlockings that are being developed for the Northeast Corridor. There are not any in this country now. We are planning to build one and put one in and test it under heavy traffic. If it works, it will enormously ease the maintenance costs of turnouts. We have to smooth the wood tie turnouts much more often than concrete tie turnouts and there is some expert opinion that says the concrete ties will not work under an interlocking because the pounding will crack them up. We do not think so and we are going to try them out. These are the kinds of important things that will all go down the drain without capital funding.

So I do not want to do that.

Mr. LEHMAN. And is there a safety factor involved in that?

Mr. CLAYTOR. No, I will not allow it to become a safety factor; I will do something else first. I am not going to let it be unsafe. It sure stops your progress and I do not think we are going to be having improved revenue-cost ratios or anything else if we start doing that.

Mr. LEHMAN. Please provide for the record a cost and project breakdown of your fiscal year 1986 capital budget.

[The information follows:]

A: A summary of Amtrak's FY86 Capital Plan is included in Attachment 1. In brief, the proposed plan funds $39.6 million out of a total of $71.1 million required as follows:

	($ Millions)
Projects to be Funded	$24.6
Capital Plan Reserve	15.0
Total Capital Plan	39.6
Less: Requirements	(71.1)
Unfunded Requirements	$31.5

Not included in these amounts are $47.3 million in projects including: $19.8 million for the Westside Connection, $6.0 million for the Croton-Harmon to Spuyten Duyvil track project, $3.7 million for other non-discretionary capital obligations, $8.3 million for other projects already approved in FY86[1/] and $9.5 million of "self-funded" projects.[2/]

[1/] See Attachment 2

[2/] This category includes two major projects:

- Beech Grove Facility Acquisition - Amtrak received $4.75 million from the sale of Harrisburg trackage all of which was committed to the purchase of Conrail shop facilities.
- AT&T Communication System - Amtrak received cash and services valued at $5.7 million of which $4.75 million was committed to improving NEC right-of-way communication lines and ducts.

Attachment 1

Page 1

FY86 CAPITAL PLAN

System Summary

PROJECT ID NO.	TITLE	$ AMOUNT (000's)
	PROJECTS TO BE FUNDED	
105	ALL RELAY INTERLOCKING - "FAIR"	$720 *
106	UNDERCUTTING	$2,500 *
107	REMOTE CONTROL - NY DIV	$175 *
110	FACILITY SUPPORT EQUIPMENT	$500 **
111	3300 VOLT SIGNAL - HARRISBURG	$450 *
112	TIE & SURFACING - NEC	$1,350 *
113	UPGRADE BRIDGES - NEC	$1,200 *
119	SPRINGFIELD LINE IMPROVEMENTS - PHASE III	$1,500 *
123	PENN STATION, NY - HVAC	$2,000 *
125	SUNNYSIDE YARD TRACK & TURNOUT RENEWAL	$630 *
302	PURCHASE LOCO RADIOS - PHASE III	$300
303	CAPITOLINER CONVERSION	$1,000 **
304	TURBOLINER UPGRADE	$2,250 *
311	IVY CITY IMPROVEMENTS	$200 **
401	RAILROAD SPEED INCREASES	$225 *
460	UPGRADE ELEVATORS & ESCALATORS - PENN STATION	$878
600	BUYOUT OF MONTH-TO-MONTH LEASES	$500 *
613	PERSONAL COMPUTER PURCHASE	$175
614	NEW MAINFRAME COMPUTER - (LEASE)	$600
753	CONVERT 60-SEAT COACHES TO 72-SEAT COACHES	$537 *
754	AUTO TRAIN STATION FACILITIES	$210 **
755	WESTCHESTER COUNTY STATION	$800 *
760	MATERIAL HANDLING CARS	$2,500 **
871	30TH STREET STATION REDEVELOPMENT	$3,400 **
	TOTAL PROJECTS TO BE FUNDED	$24,600
	PROJECTS TO BE FUNDED FROM $15 MILLION RESERVE, ON A CASE-BY-CASE BASIS, IF QUALIFIED***	
108	VEHICLE FLEET PROGRAM - (LEASE)	$200
110	FACILITY SUPPORT EQUIP	$100
114	INSTALL TRACK CIRCUITS - BOS DIV SHORELINE	$320
115	INSTALL 138 KV SWITCHES	$50
121	REPLACE SUB-STATION CONTROL CABLES	$100
122	INSTALL STEPS ON TRANSMISSION POLES	$250
127	NOUPT SIGNAL CHANGES	$100
129	NEW HAVEN COMMUNICATION LINE	$75
130	CHICAGO TERMINAL - ALTERNATE ROUTES	$90

---

* See below for amount of request not funded.

** See below for portion to be funded from reserves.

*** To qualify, a project must contribute as much to Corporate objectives for each dollar invested as the lowest ranked project included in the Capital Plan.

FY86 CAPITAL PLAN

System Summary

PROJECT ID NO.	TITLE	$ AMOUNT (000's)
	PROJECTS TO BE FUNDED FROM $15 MILLION RESERVE, ON A CASE-BY-CASE BASIS, IF QUALIFIED*** (Continued)	
300	WILMINGTON - TRANSFER TABLE PIT AND RAIL FOUNDATIONS	$250
301	SUNNYSIDE YARD POWER DISTRIBUTION	$125
303	CAPITOLINER CONVERSION (CONTINGENT PORTION)	$3,000
306	ENERGY MANAGEMENT SYSTEMS	$400
308	TAMPA - PURCHASE STATION PROPERTY	$1,500
311	IVY CITY IMPROVEMENTS (CONTINGENT PORTION)	$350
400	AMTRAK T&E CREW BASES	$1,000
441	HAND RADIOS FOR YARD OPERATIONS	$75
442	POLLUTION CONTROL	$3,800
450	STATION IMPROVEMENT MATCHING FUNDS	$700
456	MISCELLANEOUS STATION IMPROVEMENTS	$300
457	BOSTON COMMISSARY	$850
601	PROTOCOL CONVERTERS - (LEASE)	$11
602	DISK STORAGE CONTROLLER (FOR TPF)	$28
603	TERMINAL EQUIPMENT - EXISTING APPLICATION SYSTEMS	$102
604	PERSONAL COMPUTER PROGRAM, FY86	$500
605	MICROGRAPHICS DUPLICATOR REPLACEMENT	$19
606	3480 ACQUISITION - (LEASE)	$31
607	OFFICE AUTOMATION PROGRAM, FY86	$500
608	PHONE BUYOUT	$300
609	HUMAN RESOURCES SYSTEM	$75
610	LABOR ASSIGNMENT	$94
611	MARKETING DBMS	$7
612	WORD PROCESSING WORKSTATIONS	$339
750	INSTALLATION OF MOVIES ON L/D TRAINS	$326
754	AUTO TRAIN STATION FACILITIES	$210
758	BALTIMORE TRAVEL CENTER	$6
760	MATERIAL HANDLING CARS (CONTINGENT PORTION)	$3,500
850	AMTRAK/UNIV OF PA COGENERATION	$1,000
851	UPGRADE FIBER OPTICS	$4,000
871	30TH STREET STATION REDEVELOPMENT (CONTINGENT PORTION)	$5,300
880	DATA ENTRY EQUIPMENT REPLACEMENT	$450
882	CONSTRUCT TICKET RECEIVER FACILITIES	$90
883	OPTICAL SCANNING EQUIPMENT	$250
884	REVENUE ACCOUNTING FACILS EXPANSION	$100
886	DATA ENTRY TERMINALS	$70
891	CHICAGO PAYROLL OFFICE ENLARGEMENT	$31
893	CHICAGO TRAINING CENTER RELOCATION	$60
894	REPLACE ROOF - BRITCHER FACILITY	$42
895	RELOCATE LAX HRD OFFICE	$15
896	NEW YORK TRAINING CENTER	$50
897	WASHINGTON TRAINING CENTER	$30

*** To qualify, a project must contribute as much to Corporate objectives for each dollar invested as the lowest ranked project included in the Capital Plan.

FY86 CAPITAL PLAN

System Summary

PROJECT ID NO.	TITLE	$ AMOUNT (000's)	
	PROJECTS TO BE FUNDED FROM $15 MILLION RESERVE, ON A CASE-BY-CASE BASIS, IF QUALIFIED*** (Continued)		
898	AMTECH CAR - AUXILIARY POWER SYSTEM	$47	
899	MICROCODE III SIGNAL EQUIP	$12	
900	M/W AMTECH TRAINING CAR	$200	
901	WELDING, GRINDING EQUIP FOR TRAINING	$14	
903	ELECTRONICS TRAINING HARDWARE & SOFTWARE	$147	
904	HRD PHILADELPHIA TRAINING CENTER	$15	
905	HIGH SPEED PRESS	$90	
906	FORKLIFT FOR PRINT SHOP	$14	
907	AUTOMATED COUNTING MACHINE	$13	
908	AUTOMATIC PADDING EQUIPMENT	$19	
	TOTAL RESERVE REQUIREMENTS	$31,742	
	RESERVE FUNDING		$15,000
	UNFUNDED RESERVE		$16,742
	OTHER UNFUNDED PROJECTS		
105	ALL RELAY INTERLOCKING - "FAIR" (UNFUNDED REQUEST)	$80	
106	UNDERCUTTING (UNFUNDED REQUEST)	$400	
107	REMOTE CONTROL - NY DIVISION (UNFUNDED REQUEST)	$20	
109	TRACK EQUIPMENT	$1,200	
111	3300 VOLT SIGNAL - HARRISBURG (UNFUNDED REQUEST)	$50	
112	TIE & SURFACING - NEC (UNFUNDED REQUEST)	$150	
113	UPGRADE BRIDGES - NEC (UNFUNDED REQUEST)	$300	
119	SPRINGFIELD LINE IMPROVEMENTS - PHASE III (UNFUNDED REQUEST)	$500	
120	CETC	$3,500	
121	REPLACE SUB-STATION CONTROL CABLES (UNFUNDED REQUEST)	50	
123	PENN STATION, NY - HVAC (UNFUNDED REQUEST)	$500	
125	SUNNYSIDE YARD TRACK & TURNOUT RENEWAL (UNFUNDED REQUEST)	$70	
126	HARRISBURG LINE RATIONALIZATION	$2,000	
128	BALTIMORE COMMUNICATION SYSTEM	$164	
304	TURBOLINER UPGRADE (UNFUNDED REQUEST)	$250	
305	BEECH GROVE - REHAB AIR LINES	$100	
307	TAMPA SUPPORT BUILDING	$250	
309	REPLACE CAR WASHER - BOSTON	$1,000	
310	BEECH GROVE - FACILITY IMPROVEMENT	$1,000	
401	RAILROAD SPEED INCREASES (UNFUNDED REQUEST)	$25	
456	MISCELLANEOUS STATION IMPROVEMENTS (UNFUNDED REQUEST)	$1,050	
459	RELOCATE TICKET OFFICE - LITTLE ROCK	$150	
550	MATERIAL CONTROL - BOSTON	$500	

*** To qualify, a project must contribute as much to Corporate objectives for each dollar invested as the lowest ranked project included in the Capital Plan.

FY86 CAPITAL PLAN

System Summary

PROJECT ID NO.	TITLE	$ AMOUNT (000's)	
	OTHER UNFUNDED PROJECTS (Continued)		
600	BUYOUT OF MONTH-TO-MONTH LEASES (UNFUNDED REQUEST)	$776	
753	CONVERT 60-SEAT COACHES TO 72-SEAT COACHES (UNFUNDED REQUEST)	$96	
755	WESTCHESTER COUNTY STATION (UNFUNDED REQUEST)	$200	
902	LOCOMOTIVE TRAINING CAR	$400	
	TOTAL OTHER UNFUNDED PROJECTS	$14,781	$14,781
	TOTAL DEPARTMENT REQUIREMENTS	$71,123	
	TOTAL UNFUNDED		$31,523

Corporate Planning
February 13, 1986

Attachment 2

FY86 APPROVED/SUBMITTED CAPITAL PROJECTS

CAR No.	($ 000's)	Title
86-02	197	Asbestos Control - Phase II
86-04	207	Fiber Extension Project
86-05	100	Station Improvement - Johnstown, PA
86-06	185	NY Sunnyside - Fueling Facilities
86-07	239	Supervisor Control, Nassau
86-08	10	Construct Mailroom - 30th Street Station
86-10	7	WUS - Lease/Purchase Energy System
86-12	17	Tariff System Migration
86-13	67	Relocate Southwest DSO
86-16	396	New Haven Steam Sales
86-18	13	Passenger Shelter - Kewanee, IL
86-19	23	Wilmington Welding Station
86-20	63	Montrealer Upgrade
86-21	1,156	Purchase of 49 Capitoliners
86-23	1,054	Mail Handling Facility
86-24	119	Chicago Sales Relocation Project
86-27	25	18 Portable Radios - WUS
86-28	260	Permanent Speed Restriction Signs - NEC
86-29	3	Ice Maker - Ft. Worth
86-30	15	Upgrade C&WI Tracks, Chicago
86-32	27	Purchase C&WI Tracks, Chicago
86-35	13	Orlando Sales Office
86-36	11	Elizabethtown, PA, Improvements
75-117-S6	3,629	Superliner Litigation
85-118	450	FY85 Vehicle Replacements Program (Lease)
Total	$8,286	

February 24, 1986

NEW EQUIPMENT EXPENDITURES

Mr. **Lehman**. Please provide for the record a breakdown of the new equipment and cost per unit that you propose to buy on page 16.

[The information follows:]

The equipment acquisition programs contemplated in the fiscal year 1987 Capital Plan are described below. We have not shown the budgeted cost per unit because the release of this information could adversely affect the bidding process.

Equipment type	Budgeted cost per unit	Description
Single-level car	(1)	Funds acquisition of long lead-time materials associated with multi-year efforts to: replace aging Heritage equipment; add capacity to meet existing demand; improve passenger comfort; and increase passenger density per car.
Replacement baggage cars	(1)	Replace aging baggage cars and provide additional capacity to capture new mail and express business.
Subtotal	$13.5	

[1] Information could affect bidding process.

EQUIPMENT MODIFICATION EXPENDITURES

Mr. **Lehman**. Please provide for the record a cost breakdown of your equipment modification request as described on page 16.

[The information follows:]

The capital commitments for equipment modifications contemplated for fiscal year 1987 are as follows:

[In million dollars]

Rolling stock	Amount	Description
Superliner baggage-coach modifications	$3.4	Increases the revenue generating potential of these cars by providing additional sleeping car capacity and by improving coach passenger comfort.
Capacity modification of Amfleet and Capitoliner cars	7.7	Initiates a multi-year project to add capacity and, thereby, improve the revenue generating potential on selected high-frequency corridor routes.
Turboliner modification	2.5	Upgrades one Turboliner set to improve fuel efficiency and capacity and sustain high-speed services on Amtrak's Empire Service in New York.
Subtotal	13.6	

PROTOTYPE PASSENGER CARS

Mr. **Lehman**. You have been working quite a while on designing new prototype cars in anticipation of your next large car buy in the late 1980's. How is that work proceeding—do you have any of these test cars out in the field yet?

Mr. **Claytor**. Not yet. All three test car bodies have been delivered to Beech Grove, where they are being finished. The first sleeper is well along and our Board is going out to inspect it in April and look over the Beech Grove shops at the same time.

That car will probably be road-tested in service in the latter part of the summer and the other two will be coming along a few months behind it. And we hope to have all three of them in operation in 1987 and I expect to run them a minimum of two years and it depends on how they work, but a minimum of two years before we would even consider placing any orders.

HEP CAR CONVERSION

Mr. **Lehman**. Please update for the record the HEP conversion table found on page 624 of last year's hearing record. Please also explain the reason for the large increases in average cost as reported on page 624 of last year's hearing record.

[The information follows:]

[In thousands of dollars]

	Number converted	Average cost
Fiscal year:		
1976	$30	$92
1977	13	131
1978	87	120
1979	41	256
1980	157	296
1981	171	345
1982	38	322
1983	20	425
1984	20	540
1985	21	752

In fiscal year 1984, we started a program of converting specialty cars to HEP, i.e., dome cars, high-level lounges and diners, buffet cars, and table cars. The engineering material costs and labor costs were much higher due to the uniqueness of the cars. These large increases in cost extended into fiscal year 1985 with the completion of the HEP program.

MAINTENANCE FACILITY REQUEST

Mr. **Lehman**. Please also provide for the record a cost breakdown of your maintenance facility budget estimate for Fiscal Year 1987 on page 17.

[The information follows:]

The capital commitments for maintenance facilities contemplated for fiscal year 1987 are as follows:

[In millions of dollars]

Maintenance facilities	Amount	Description
Los Angeles	$3	Continue a multi-year effort to rebuild the locomotive and car servicing and maintenance facilities to improve safety and replace obsolete structures. The existing facilities are old and inefficient.
Sunnyside Yard	2	Continue a multi-year project to rebuild deteriorated yard facilities to improve safety while sustaining existing operations.
Subtotal	5	

It should be noted that because of constrained capital availability, the pace and scope of the work for upgrading these facilities has been significantly scaled back from what was reported to you last year. We are now concentrating on correcting potential safety deficiencies and upgrading existing structures.

STATIONS/ON BOARD SERVICES

Mr. LEHMAN. Please provide for the record a breakdown of your stations/on board services budget estimate on page 18, and please show the location of each station.

[The information follows:]

The capital commitments for stations/on board services contemplated for Fiscal Year 1987 are as follows:

[In millions of dollars]

	Amount	Description
Station improvements	$3	Upgrade selected stations to improve service quality, revenues, safety and accessibility. Amtrak continues to solicit local and state participation in station projects to enlarge the pool of available funds.
Subtotal	[1] $3	

[1] The amount shown here will be allocated to stations in most critical need of safety work and to those where we receive commitments for state and local participation.

RIGHT-OF-WAY EXPENSES

Mr. LEHMAN. Please provide for the record a cost breakdown of your right of way budget estimate on page 19.

[The information follows:]

The capital commitments for right-of-way improvements contemplated for Fiscal Year 1987 are as follows:

[In millions of dollars]

	Amount	Description
Right-of-way	$24	Continue programs to upgrade track, communication and signal systems, electric traction systems, and bridges and buildings. These programs are designed to protect the Federal investment and ensure a safe and efficient high-speed corridor service.
Vehicles and track equipment	1	Replace vital support vehicles and track equipment which, due to their age and condition, are unreliable and costly to maintain.
Subtotal	25	

OTHER SYSTEMS/SUPPORT

Mr. **Lehman**. Please provide for the record a breakdown of your other systems/support budget estimate on page 20.

[The information follows:]

The capital commitments contemplated for other systems/support for Fiscal Year 1987 are as follows:

[In millions of dollars]

Other systems/support	Amount	Description
Computer equipment	$1	Acquire computer equipment to replace or upgrade equipment which has exceeded its service life. Provide equipment enhancements to add computer capacity and reduce the need for leased communication lines.
Safety and legal requirements	3	Funds various safety and legal requirements including such things as grade crossing protection, pollution control, etc.
Subtotal	4	

NECIP BUDGET REQUEST

Mr. **Lehman**. Regarding your $24 million Northeast Corridor request for fiscal year 1987, Administrator Riley yesterday took pleasure in announcing this project is now completed.

Why do you require an additional $24 million?

Mr. **Claytor**. Well, before he left, Mr. Riley said to me that he hoped that I would point out that he did not mean to say that the project is complete, he meant to say that the FRA portion of the project is complete. There is still quite a lot of the Northeast Corridor still under contract that we are supervising the completion of and then, of course, there is the authorized, but unappropriated funds for the rest of the basic Northeast Corridor project. It was $310 million, which we have pulled down now with other appropriations to about $270 million.

But it is out of that fund that I was asking for the additional $24 million. If we do not get additional NECIP money, all of that work is going to have to be done as part of the basic rehabilitation of the corridor and we are going to have to do it with our capital funds and if I have to do that, I am going to have a hard time, when I said $100 million of capital is all that I need, I was not including this. It includes such things as rebuilding bridges that are not falling down yet, but are getting to the point where in another three or four years, you have to rebuild them. And a bunch of other stuff like that, that was in NECIP, and was authorized but never got appropriated.

And so this is why I am trying to work on it a little bit, year by year. That was what we got when we had the appropriation out of the NECIP funds for part of that this past year and I hope we get some more.

Mr. **Lehman**. What is the effect of the administration's proposal to rescind $11.962 million fiscal year 1986 Northeast Corridor funds?

How critical are these funds to your operations?

Mr. **Claytor**. It would be just that much worse than not getting the next one. I mean it has all got to come out of our capital.

Mr. **Lehman**. Regarding your $24 million NECIP budget estimate for fiscal year 1987, please provide for the record a description of each of the three projects, explain the work on each project funded through fiscal year 1986, the work you propose to do in fiscal year 1987, and any outyear costs estimated for these projects.

[The information follows:]

The NECIP budget request for fiscal year 1987 is as follows:

	Millions
Warren Street Bridge.—Complete reconstruction of the bridge over Warren Street in Trenton, NJ	$3.6
New York tunnels electrical and mechnical.—Perform the following work in the East River Tunnel: install emergency motor controls on tunnel exhaust fans and tie back to control center, install new tunnel lighting, install communication system, develop life safety plan for evacuation and other emergencies, and install signs	4.8
Concrete ties.—Purchase and install 67,320 concrete ties with undercutting and partial rail renewal	15.6
Total	$24.0

Originally, Warren Street Bridge and Union Street Bridge reconstruction was requested as a single line item; however, the FY85 NECIP funding provided funding for only Union St. Bridge. There has been no funding and no work accomplished at Warren St. bridge to date. The request for FY87 is for complete reconstrution of this bridge and will require no additional funding in the out-year.

The New York Tunnel funding provided in FY85 was $1.7M. This funding was sufficient only to rehabilitate the electrical and mechanical equipment for ventilation in the East River Tunnels. The FY87 request will complete the remaining work in the New York Tunnels and will require no additional funding in the out-years.

The Concrete Tie funding provided in FY85 was $17.8M This funding provided for the installation of 40.6 Track Miles of concrete with undercutting and partical rail renewal. The out-year funding required would be for an additional 35.6 track miles of concrete ties, undercutting and partial rail renewal at an estimated cost of $26.2M in 1984 dollars.

WARREN STREET BRIDGE

Mr. **Lehman**. Please also explain why the cost of the Warren Street bridge increased from $2.3 million as reported on page 626 of last year's hearing record for fiscal year 1986 to $3.6 million for fiscal year 1987. Please also explain why this project will not apparently be funded in fiscal year 1987.

[The information follows:]

The major reasons for the increase in the estimate for the reconstruction of the Warren Street Bridge are:

(a) Originally, the estimate was predicated on the reconstruction of both Union St. and Warren St. Bridges under the same contract and the "economy of scale" principle whereby cost savings would be realized by one contractor mobilizing and performing the work concurrently on both bridges.

(b) The original estimate was quoted in 1984 dollars and consequently must be escalated to 1987 dollars.

Amtrak proposes to fund Warren Street Bridge in fiscal year 1987. Union Street Bridge, which was funded in fiscal year 1985, is undergoing construction and will be completed prior to commencement of construction on Warren Street Bridge.

Mr. **Lehman**. The Subcommittee will now stand adjourned and thank you, so much, for being here.

TUESDAY, FEBRUARY 25, 1986.

INTERSTATE COMMERCE COMMISSION

WITNESSES

THE HONORABLE HEATHER J. GRADISON, CHAIRMAN
JOHN F. HENNIGAN, JR., CHIEF OF POLICY
EDWARD E. GUTHRIE, MANAGING DIRECTOR
JANE F. MACKALL, DIRECTOR, OFFICE OF PROCEEDINGS
RONALD S. YOUNG, DIRECTOR, BUREAU OF ACCOUNTS
BERNARD GAILLIARD, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE
WILLIAM R. SOUTHARD, DIRECTOR, OFFICE OF TRANSPORTATION ANALYSIS
NEIL S. LLEWELLYN, DIRECTOR, BUREAU OF TRAFFIC
JAMES H. BAYNE, SECRETARY
MARY G. HOGYA, CHIEF, BUDGET AND FISCAL OFFICE
EDWARD L. BLANSITT III, BUDGET OFFICER

OPENING REMARKS

Mr. LEHMAN. The Subcommittee will come to order.

This morning we will receive testimony on the Fiscal Year 1987 budget request for the ICC. Our principal witness today is Mrs. Heather Gradison, the Chairwoman.

Mrs. Gradison, we welcome you on your first appearance as Chairwoman before this Subcommittee, and, as is customary, your biography will be inserted in the record.

We would be pleased to hear your statement at this time. You may read it, or if you would prefer to summarize it we shall insert your entire statement in the record.

Mrs. GRADISON. Thank you, Mr. Chairman.

It is good to be here. I would like to introduce the people at the table with me. For the record, on my right, is John Hennigan, Chief of Policy; to his right, is Bernard Gailliard, Director of Compliance and Consumer Assistance (OCCA); on my left, is our Managing Director, Edward Guthrie; to his left, is Jane Mackall, Director of Proceedings; and to her left, is Ron Young, and he is Director of Accounts.

DEREGULATION LEGISLATION

The Administration has stated its intention to offer legislation to further deregulate interstate surface transportation and sunset the Interstate Commerce Commission by October 1, 1986. The legislation will also propose to transfer the remaining regulatory functions to the Departments of Transportation and Justice. The Commission is on record as supporting previously introduced legislation to reduce or eliminate the regulation of non-rail surface transportation, particularly the regulation of motor carriers of property. Enactment of the Administration's motor carrier bill alone would reduce our budget needs by over half.

We have also supported various proposals for reducing regulation of water carriers, brokers, and freight forwarders. However, the Commission has not yet seen or had the opportunity to analyze the new deregulation and sunset proposals. For that reason, the Commission is refraining from commenting about the specific merits of the proposed legislation. Nonetheless, I wish to leave no doubt that the new proposals will produce a more efficient transportation system and eliminate needless regulation. I intend to offer my enthusiastic support for the Administration's initiatives.

This is somewhat of a man bites dog story instead of a dog bites man, when you have a chairman of an agency supporting transfer of its functions. And as we go through the questions later on, I would be happy to provide more specifics for why I support that sunset.

If sunset legislation is enacted, the Commission will require approximately $12.9 million in Fiscal Year 1987 to cover the severance costs of those employees whose functions will not transfer to another agency.

FY 1987

In the event that legislation to further deregulate the motor carrier industry or sunset the Commission is not enacted for implementation by October 1, 1986, we propose a current services budget to provide for the continuity of existing regulatory functions required under current legislation. So this year we have two budgets. We have one budget that is zero and another budget that is $48.3 million and I am prepared to discuss them both. Obviously, one will take a little longer than the other.

The proposed current services budget totals $48.3 million and provides for a total of 800 staff years. This is 166 staff years and $2.1 million less than actually expended in Fiscal Year 1985. This request also reflects the Commission's changing regulatory role and its continuing efforts to make efficient use of resources.

STAFF RESOURCES

Some decreases in workload have continued to occur with respect to our motor carrier regulatory functions under existing legislation. Staff time devoted to motor carrier functions is anticipated to decline 15 percent between Fiscal year 1985 and 1987. The Commission continues to implement provisions of the Staggers Rail Act but projected workload reductions will permit staff resources devoted to rail activities to be reduced over 11 percent between Fiscal Year 1985 and 1987.

During periods of retrenchment, administrative support activities do not decline in direct proportion to the reduction in employment levels for the Commission, as a whole, because of the wide range of administrative functions that must continue to be performed and because there is an increased workload associated with carrying out reductions in force, and other retrenchment activities.

Nonetheless, staff resources devoted to these functions will be reduced 3 percent between Fiscal Year 1985 and 1987.

Several significant operational changes will be implemented by Fiscal Year 1987. Extensive changes are being made in the field structure of the Office of Compliance and Consumer Assistance, which has experienced a decrease in work requirements. These include a reduced level of complaints and a decrease in applications for short-term operating authority.

The reorganization will also produce more efficient deployment of resources. The Commission addressed the reorganization of OCCA in our budget conference last summer and we are satisfied with the moving forward of that reorganization.

The structure of the Bureau of Accounts is being realigned to combine staffs having similar professional disciplines and technical backgrounds and realignment there will reduce the headquarters organization from five sections to three, thus reducing the number of managerial and administration positions required.

The new Office of Public Assistance will soon be created from the merger of the Office of Special Counsel and the Small Business Assistance Office. Let me make it clear, we have not eliminated the Commission's Special Counsel. The Special Counsel is also the Director of the Public Assistance Office. And those two offices currently provide special types of assistance to the public. A synergism resulting from the merger of these two offices, should improve upon the already high quality of assistance available to the public. We have been very pleased with the performance of those two offices in the past, and we feel that the merger should be beneficial to the public.

Earlier this month, the Office of Legislation and Government Affairs was merged with the Office of Public Affairs. And this merger reduced overhead and combined staff performing similar functions. What we did there is that we provided all of our public and Congressional outreach and we put it in one office. And we do have a new head of that office, Alex Jordan, whom I would like to introduce, Alex, currently standing behind me.

And the new office is called the Office of Legislative and Public Affairs.

The Commission's actions to streamline the agency and reduce overhead are consistent with reduced regulatory role and will enable it to continue to carry out regulatory responsibilities under existing legislation, more efficiently than in the past. And whether the Commission continues to operate as an entity, carrying out its present responsibilities, or whether the regulatory responsibilities are reduced or transferred to other agencies, are matters for you, the Congress, to decide. But in the absence of further regulatory reform legislation, the resource levels reflected in the Commission's proposed current services budget, are required to satisfy the Commission's current regulatory responsibilities.

DIRECTED RAIL SERVICE COMMENT

Also I would like to comment on the direct rail service, if I may? I will highlight some aspects of this budget and then I will be glad to answer your questions with regard to it, as well.

The only payments made recently from this account, were to the Kansas City Terminal Railway Company for directed service performed over the lines of the Chicago, Rock Island, and Pacific Railway, between October 15, 1979, and March 3, 1980. At the end of Fiscal Year 1985, the Commission had an unobligated balance of approximately $2,353,000 in directed service funds remaining from the Fiscal Year 1982 supplemental appropriations of $8 million.

Under the continuing resolution for Fiscal Year 1986, P.L. 99-190, $2.3 million of this amount was transferred to the Commission's salaries and expenses account, leaving a balance of $53,000 in payments for direct rail services account.

There may be some additional expenditures out of that account. There is a case before us, at this time. We had not requested additional appropriations but we do have a case before us, so that we do not know whether or not we will need to expend those funds.

I would be happy to answer any questions that you have about this as well.

[The biography and prepared statements of Mrs. Gradison follow:]

HEATHER J. GRADISON, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Nominated by the President on March 18, 1982 and confirmed by the Senate on June 16, 1982. Sworn in as the youngest Commissioner and the first Republican woman in the history of the Commission.

Aggressively supports and promotes the President's goal of eliminating regulatory burdens on surface transportation.

Delivered more than 35 speeches in support of transportation deregulation, urging audiences to take advantage of the new opportunities provided by deregulatory legislation.

Testified before Committees of Congress in support of further decontrol and elimination of unnecessary ICC regulation and paperwork requirements.

Worked to streamline agency activities that are required by law.

Insured that the Bus Regulatory Reform Act of 1982 was implemented to promote greater reliance on the marketplace rather than governmental economic regulation.

Supported aggressive use of the rail regulatory exemption provision of the Staggers Rail Act, to eliminate unnecessary rail regulation as directed by the Congress.

Initiated Commission consideration and facilitated the preparation and approval of the decision to exempt from regulation Miscellaneous Agriculture Commodities by railroad.

Supported and prompted final action in the exemption from regulation of uncontested rail trackage rights agreements.

Fought to eliminate needless and costly rail regulation in the Special Docket Procedures resulting in payment of reparations or waivers of collection of undercharges between a consenting carrier and shipper for amounts under $5000 without regulatory oversight.

Advocated broad use of a provision in the Bus Regulatory Reform Act of 1982 to exempt from regulation motor carrier merger and finance transactions. The exemption eliminates the need for formal filings and extensive Commission review in hundreds of unopposed finance transactions.

Pushed for final implementation of short notice tariff filing and expanded and simplified zone of rate freedom requirements for motor carriers of property and passenger carriers.

Initiated Commission consideration of a rulemaking to exempt from ICC regulation all railroad demurrage rules and charges.

Elected by the Commission to serve as its Vice Chairman for the calendar year 1985.

Designated by the President on December 13, 1985 as Chairman of the Commission, and oath of office was administered in a White House ceremony.

SOUTHERN RAIL SYSTEM (1974-82)

Eight years of experience including responsibility for market and pricing analysis for $75 million in annual corporate freight revenues.

Performed market research and economic analysis of rail-served industries.

First-hand transportation pricing experience. Developed exempt pricing system for newly deregulated rail commodities—fresh fruits and vegetables.

Personal: Born: Houston, Texas, 1952, married: Willis D. Gradison, Jr., three children.

Education: Radford University, Radford, Virginia, B.A., Marketing/Management, 1975. George Washington University, graduate business study, 1976 and 1978.

4B

STATEMENT OF HEATHER J. GRADISON
CHAIRMAN, INTERSTATE COMMERCE COMMISSION
BEFORE THE SUBCOMMITTEE ON
TRANSPORTATION AND RELATED AGENCIES
HOUSE COMMITTEE ON APPROPRIATIONS

Fiscal Year 1987 Budget Request

February 25, 1986

Mr. Chairman, Members of the Subcommittee:

Thank you for inviting me here today to discuss the Interstate Commerce Commission's FY 1987 appropriation request. I would like to highlight some aspects of this request, and then I will be glad to answer your questions.

The Administration has stated its intention to offer legislation to further deregulate interstate surface transportation and sunset the Interstate Commerce Commission by October 1, 1986. The legislation will also propose the transfer of the remaining regulatory functions to the Departments of Transportation and Justice. We are on record as supporting previously introduced legislation to reduce or eliminate the regulation of non-rail surface transportation, particularly the regulation of motor carriers of property. (Enactment of the Administration's motor carrier bill alone would reduce our budget needs by over a half.) We have also supported various proposals for reducing regulation of water carriers, brokers, and freight forwarders. However, the Commission has not yet seen or had the opportunity to analyze the new deregulation and sunset proposals. For that reason, we are refraining from commenting about the specific merits of the proposed legislation. Nonetheless, I wish to leave no doubt that if these new proposals will produce a more efficient transportation system and eliminate needless regulation, I intend to offer my enthusiastic support for the Administration's initiatives.

If sunset legislation is enacted, the Commission will require approximately $12.9 million in FY 1987 to cover the severance costs of those employees whose functions will not transfer to another agency. However, in the event legislation to further deregulate the motor carrier industry or sunset the Commission is not enacted for implementation by October 1, 1986, we have proposed a current services budget to provide for the continuity of existing regulatory functions required under current legislation. The Commission's proposed current services budget totals $48.3 million and provides for a total of 800 staff-years. This is 116 staff-years and $2.1 million less than actually expended in FY 1985. This request also reflects the Commission's changing regulatory role and its continuing efforts to make efficient use of resources.

Some decreases in workload have continued to occur with respect to our motor carrier regulatory functions under existing legislation. Staff time devoted to motor carrier functions is anticipated to decline 15% between FY 1985 and FY 1987.

The Commission continues to implement provisions of the Staggers Rail Act. However, projected workload reductions will permit staff resources devoted to rail activities to be reduced over 11% between FY 1985 and FY 1987.

During periods of retrenchment, administrative support activities do not decline in direct proportion to the reduction in employment levels for the Commission as a whole because the wide range of administrative functions must continue to be performed and because there is increased administrative work associated with carrying out reductions in force and other retrenchment activities. Nonetheless, staff resources devoted to these functions will be reduced 3% between FY 1985 and FY 1987.

Several significant operational changes will be implemented by FY 1987. Extensive changes are being made in the field structure of the Office of Compliance and Consumer Assistance, which has experienced a decrease in work requirements. These include a reduced level of complaints and a decrease in applications for short-term operating authority. The reorganization will also produce more efficient deployment of resources.

The structure of the Bureau of Accounts is being realigned to combine staffs having similar professional disciplines and technical backgrounds. The realignment will reduce the headquarters organization from five sections to three, thus reducing the number of managerial and administrative positions required.

A new Office of Public Assistance will soon be created from the merger of the Office of Special Counsel and the Small Business Assistance Office, two offices that currently provide special types of assistance to the public. The synergism resulting from merger of these two offices will improve upon the already high quality of assistance available to the public.

Earlier this month the Office of Legislation and Governmental Affairs was merged with the Office of Public Affairs. This merger reduced overhead and combined staff performing similar functions. The new office is called the Office of Legislative and Public Affairs.

The Commission's actions to streamline the agency and reduce overhead are consistent with its reduced regulatory role and will enable it to continue to carry out regulatory responsibilities under existing legislation more efficiently than in the past.

Whether the Commission continues to operate as an entity carrying out its present responsibilities, or whether the regulatory responsibilities are reduced, or transferred to other agencies, will be matters for the Congress to decide. But, in the absence of further regulatory reform legislation, the resource levels reflected in the Commission's proposed current services budget are required to satisfy the Commission's current regulatory responsibilities.

I will now be happy to answer any questions you may have.

STATEMENT OF HEATHER J. GRADISON
CHAIRMAN, INTERSTATE COMMERCE COMMISSION
BEFORE THE SUBCOMMITTEE ON
TRANSPORTATION AND RELATED AGENCIES
HOUSE COMMITTEE ON APPROPRIATIONS

Directed Rail Service

February 25, 1986

Mr. Chairman, Members of the Subcommittee:

Thank you for inviting me here today to discuss the Interstate Commerce Commission's FY 1987 budget for directed rail service payments. I would like to highlight some aspects of this budget, and then I will be glad to answer your questions.

The only payments made recently from this account were to the Kansas City Terminal Railway Co. for directed service performed over the lines of the Chicago, Rock Island, and Pacific Railway Co. between October 15, 1979, and March 23, 1980.

At the end of FY 1985, the Commission had an unobligated balance of approximately $2,353,000 in directed service funds remaining from the FY 1982 supplemental appropriation of $8 million. Under the Continuing Resolution for FY 1986, P.L. 99-190, $2,300,000 of this amount was transferred to the Commission's Salaries and Expenses account, leaving a balance of $53,000 in the Payments for Directed Rail Service account.

No new directed service is anticipated in FY 1986 or FY 1987, and as a result, we have not requested an appropriation of additional funds for this account in the Commission's current services budget. However, the Commission expects to decide on a claim for additional compensation from the Kansas City Terminal some time during FY 1986; therefore, funding may be required to cover this claim.

I would now be happy to answer any questions you may have.

Mr. Lehman. We will go directly into the questions, and then, when Mr. Coughlin gets here, I will yield to him and then to Mr. Sabo, for their statements.

Mrs. Gradison. Okay, that will be fine.

ICC SUNSET

Mr. Lehman. The President has proposed sunsetting the ICC on October 1, 1986 in conjunction with the proposed legislation to end ICC regulation of trucking rates and entry. Under the President's proposal, remaining regulatory functions in the rail area would be transferred to the Department of Transportation.

You have already touched on this, but do you support this proposal? You have already said that you have not seen exactly what is going to be proposed.

We know what the deregulation legislation looks like, but we do not know what the actual sunset legislation will look like. When do you think we will see that, and what do you anticipate that it will contain, and how will you react to this?

Mrs. Gradison. I do not know when we will see it. It is being drafted by the folks at DOT. After we do see it, obviously we want to play a significant role in its review and make recommendations to you all for its disposition.

With regard to my personal support of sunsetting the ICC, let me give you a few specifics. Motor carrier regulation, in my opinion, should be ended with the exception of safety and insurance. DOT already handles the safety aspect and the Commission has a fine insurance oversight system in place. And though it only is in place to review a small portion of the motor carriers operating in the country, it is a good system and it could easily be transferred to the DOT.

It appears that some continued regulation of the railroads is necessary and it would be appropriate to transfer that rail regulation intact to the DOT.

In terms of efficiency, the motor carrier safety, as I said, and insurance matters could best be handled by the DOT because you would be putting them both in the same place, rather than having people accountable to two different institutions—one an agency and one a Cabinet office. It seems that if they are accountable to one place, the buck would stop there.

We do not have enough information on the proposed legislation yet, as a Commission, to respond on its specifics. But frankly, I do not see a lessening of protection to the public, if we were to go ahead with a transfer. As long as the Commission is charged with the regulatory task that we have before us, I want to make it clear that we are going to do the best job that we can do. I also want to make it clear that though this room is filled with a fair number of ICC employees, we have 800 fine ones, and wherever a portion of our employees are housed, whether it is at the ICC, or the DOT or partially at the Justice Department, I know that they can and will do the job and that they are competent and so I am satisfied that we do have many of the elements in place, housed in our building, that could be transferred relatively intact to another agency, which would reduce costs to the overall taxpayer, but also to the consumer.

And that is one of the reasons that I am supportive of this legislation.

REGULATORY INDEPENDENCE

Mr. **Lehman**. I think that the main difference between an independent ICC and DOT is the fact that DOT has to serve the policy of the current administration, whatever it may be, and the ICC is self-perpetuating and crosses over various administrations.

I just wonder whether the same kind of protection for consumers or for carriers or for shippers would be available in the DOT depending upon who happens to be making policy for transportation as would be under the ICC, which would, in theory at least, be much more objective?

Mrs. **Gradison**. Well, recognizing your concern, the statutes are very clear about what may or may not be done with regard to the implementation of those statutes. And one would also have to recognize that independent agencies are largely filled by the Administration that happens to be in power at that time. So, philosophically, one would find members on an independent agency that tend to be of the same philosophy as the administration just as the DOT would be filled with members of the same philosophy of the sitting administration.

I am not suggesting that our Interstate Commerce Commission is not independent. We are independent, but we do have a statute to follow and the DOT would have the same statute which they would be charged with implementing.

TRUCKING REGULATION BENEFITS

Mr. **Lehman**. In proposing the Administration's trucking deregulation bill last September, Secretary Dole said, and I quote: "Economic regulation of the transportation industries began some 98 years ago, much of it has now become an expensive paper chase with no offsetting benefits to consumers and questionable value to carriers."

Do you agree with Secretary Dole—is the ICC's job in the trucking area nothing more than an "expensive paper chase"?

Are you providing any benefit to trucking consumers and carriers?

Mrs. **Gradison**. Well, I would not call these activities worthless. But I believe that the cost of the activities to motor carriers and shippers and to the government, far outweighs the benefit that the public derives from these activities. And, in fact, there are any number of these activities that are currently performed by the Interstate Commerce Commission that could be performed and provided in the private sector by their own associations.

So, therefore, while I do not agree with calling it an expensive paper shuffle, I do agree that it could easily be eliminated.

PRIVATIZATION OF ICC ACTIVITIES

Mr. **Lehman**. Does the American Trucking Association agree with your assertion that they could privatize these types of situations?

Mrs. **Gradison**. The American Trucking Association is faced with some interesting problems. Without going into a whole lot of specifics, the pressures that they are under deal with sky-high increases in insurance premiums, heavy withdrawal liability associated with multi-employer pension plans and a multitude of costly state rules and regulations with which the industry must contend. None of those have anything to do with the ICC, but it is my understanding that they are concerned enough about those problems that they would rather deal with those first and then deal with eliminating the shell of regulation with which they are faced. Personally, I am of the opinion that I would like to see the Interstate Commerce Commission's role in motor carrier regulation eliminated and eliminated now, because I think that is one more step away from the government interfering in that industry.

Mr. **Lehman**. Of course, the American Trucking Association is just one part of the trucking industry.

Secretary Dole also termed "absurd" the ICC's rate filing requirements. Do you agree with her? Does this requirement have any redeeming value?

Mrs. **Gradison**. I agree with her completely. The rate filing requirements, in my opinion, should be discontinued.

TRUCKING INDUSTRY ECONOMIC HEALTH

Mr. **Lehman**. The American Trucking Association has expressed strong opposition to the Administration's deregulation bill. They claim further deregulation at this time would be a mistake because their industry is suffering from declining profits, the highest bankruptcy rate in its history, and large increases in taxes and insurance rates.

What is the current economic health of the trucking industry, and how will the Administration's bill affect this industry's economic future?

Mrs. **Gradison**. I knew this question was going to come up and I have asked our Chief of Policy, John Hennigan, to address it.

Mr. **Hennigan**. The data that the ICC collects on the trucking industry comes out quarterly. And it is true that in 1985, the economy has been not performing as well as it did in 1984, and it is also true that the trucking industry, itself, in terms of new income, has declined compared to 1984. But, again, the years 1983 and 1984 represented the U.S. economy coming out of a recession.

The three quarters of statistics that we have on the trucking industry in 1985 indicate that while the trucking industry is not doing as well as it did in 1984, that by the third quarter, the decline relative to 1984 is almost eliminated.

I think a long-term assessment of the trucking industry is that it is performing quite well and that the transition from the regulation of 1980 to deregulation is moving quite well.

I cannot make any predictions about 1986 thus far, but it would seem that the economy will continue on at least as well as it did in 1985 and that the trucking industry earnings should increase.

TRUCKING DEREGULATION ECONOMIC IMPACT

Mr. **Lehman**. I guess the question was will deregulation help or hurt the trucking industry. But the trucking industry is not a monolithic type of operation. What parts of the trucking industry, or what kinds of people in the trucking industry, do you think that deregulation would hurt, and which segments of it do you think it would help?

Mr. **Hennigan**. Well, first of all, we are here in 1985 with five years of deregulation under the Motor Carrier Act, and we are talking about further deregulation.

Mr. **Lehman**. I meant further deregulation.

Mr. **Hennigan**. Yes. Entry is currently fairly well opened, competition is very well established. I am not sure that the trucking industry will be looking forward to any real significant change in terms of new entrants.

One of the things that further deregulation would mean for the trucking industry is the elimination of a lot of paperwork and a lot of required filings at the Interstate Commerce Commission. So it is quite possible that deregulation would be favorable for the trucking industry.

Mr. **Lehman**. On balance then, further deregulation would not have too much of an impact either way, is that what you are trying to say?

Mr. **Hennigan**. There is a possibility that if further deregulation went to the preemption of state regulation, that it would have favorable aspects for certain trucking companies and shippers in general. And that is proposed by one of the bills.

Mr. **Lehman**. Mrs. Gradison, do you endorse those statements?

Mrs. **Gradison**. Yes, sir.

Mr. **Lehman**. Please expand on your answer for the record, citing appropriate statistical data.

[The information follows:]

Though the 1986 outlook for the trucking industry is favorable, Commission data on the 100 largest carriers of property (exclusive of United Parcel Service) reflects a decline in financial performance for the 12 month period ended September 30, 1985, as compared to a year earlier as follows:

Revenues: +3.8 percent; tonnage: −1.0 percent; operating ratio: up from 95.4 percent to 96.3 percent; net income: −18.4 percent; return on equity: down from 14.6 percent to 11.0 percent.

The average unemployment rate for the "Trucking Service Industry" was 8.0 percent in 1984 and improved to 7.5 percent in 1985. During the 4th quarter of 1985, the rate was 7.2 percent, the same as for "all manufacturing" and only slightly above the 7.0 percent for the Nation.

Current problems faced by the industry include reduced availability and higher costs for insurance, increased taxation and pension fund requirements, and lack of uniformity among states in assessing and collecting use taxes and registering vehicles. By contrast, fuel costs have fallen significantly in recent months.

The trucking industry anticipates improvement in traffic volume and financial performance at least for the first half of 1986. This expectation is expressed in a current publication, "The 1985 Financial Analysis of the Motor Carrier Industry", sponsored and distributed by the American Trucking Associations. The report states that the period of inventory liquidation, which began in the last quarter of 1984 and continued through the first half of 1985, produced "some of the worst results recorded since the 1982 recession" but had now run its course. The financial analyst responsible for the report noted that the securities market now favors the trucking industry and believes that 1986 will be a much better year for profits and returns on investment. The American Trucking Associations' recent prediction of a 5 to 10 percent increase in 1986 operating income for the trucking industry reflects a growing optimism that both the economy and industry conditions will be conducive to impoved performance.

We continue to believe that the administration's bill would be favorable to the industry's economic future because the bill would further encourage competition and provide additional opportunities and incentives to improve productivity.

TRUCKING INDUSTRY ECONOMIC PERFORMANCE

Mr. LEHMAN. Please update for the record the trucking industry's economic performance data found on page 845 of last year's hearing record.

[The information follows:]

A comparison of the operating results of 100 of the Nation's largest trucking companies for the twelve months ending September 30, 1985 (latest available data) with the same period of 1984 reveals the following:

Operating revenues increased 3.8 percent to almost $17.7 billion and revenue tons hauled decreased nearly 1 percent.

Net carrier operating income declined 18.2 percent to $645 million and net income decreased 18.4 percent to $378.2 million.

The operating ratio (ratio of operating expenses to operating revenues) increased from 95.4 percent to 96.3 percent.

Rate of return on shareholders' equity fell from 14.58 percent to 11.01 percent.

These 100 carriers do not include the United Parcel Service (UPS) carriers, whose operations are dissimilar and highly specialized. The revenues of these carriers account for about 50 percent of the total revenues generated by approximately 2,200 Class I and II regulated trucking companies.

Traffic volume and earnings declined in 1985 as a result primarily of the slowdown in the Nation's economy. However, earnings and traffic volume for the motor carrier industry are expected to improve in 1986 compared to disappointing levels of 1985 as the result of an anticipated improvement in the economy and substantially declining fuel prices.

TRUCK TONNAGE INDEX

Mr. LEHMAN. Please also provide for the record an update of the truck tonnage index data found on page 847 of last year's hearing record.

[The information follows:]

The following updates the chart from page 847 of last year's record. The source for the Truck Tonnage Report is the American Trucking Associations' Monthly Truck Tonnage Report. It represents all truckload and less-than-truckload freight carried by Instruction 27 general freight carriers. These tend to be larger (Class I) carriers heavily engaged in less-than-truckload operations.

The Index of Industrial Production is produced by the Federal Reserve Board. Both indexes are seasonally adjusted.

TRUCK TONNAGE AND INDUSTRIAL PRODUCTION INDEXES

	1983		1984		1985	
	Truck [1] tonnage index	Index [2] of industrial production	Truck [1] tonnage index	Index [2] of industrial production	Truck [1] tonnage index	Index [2] of industrial production
Jan	127.5	102.5	144.4	118.4	141.1	123.6
Feb	126.4	103.3	140.1	119.3	136.5	123.7
Mar	128.9	104.2	143.8	120.1	138.9	124.0
Apr	130.4	105.6	146.0	120.7	137.5	124.1
May	133.3	106.9	143.8	121.3	136.4	124.1
June	135.5	107.8	142.7	122.3	133.2	124.3

TRUCK TONNAGE AND INDUSTRIAL PRODUCTION INDEXES—Continued

	1983		1984		1985	
	Truck [1] tonnage index	Index [2] of industrial production	Truck [1] tonnage index	Index [2] of industrial production	Truck [1] tonnage index	Index [2] of industrial production
July	150.1	109.8	143.9	123.2	131.2	124.1
Aug	137.1	111.6	145.0	123.5	135.2	125.2
Sept	138.4	113.7	141.8	123.3	135.1	125.1
Oct	139.5	114.4	144.7	122.7	139.3	124.4
Nov	140.0	114.8	147.0	123.4	140.1	125.4
Dec	143.3	115.5	144.3	123.3	[3] 133.2	126.3

[1] 1967 = 100

[2] 1977 = 100. The industrial production index provided for the hearing record in earlier years was based on 1967 = 100. During 1985, the Federal Reserve Board changed the base year to 1977, made major changes in index methodology, and revised the historical index accordingly.

[3] Preliminary.

MOTOR CARRIER OPERATING REVENUE

Mr. LEHMAN. Please also provide for the record an update of the motor carrier operating revenue data found on pages 848 and 849 of last year's hearing record.

[The information follows:]

The following schedule compares the total revenues generated by the 10 largest motor carriers with the total revenues generated by all Class I motor carriers for each of the years 1978 through 1984. Revenues of the two United Parcel Service carriers have been excluded in compiling these totals since their operations are highly specialized and dissimilar from the rest of the industry.

COMPARISON OF TOTAL OPERATING REVENUES
TEN LARGEST MOTOR CARRIERS AND ALL CLASS I MOTOR CARRIERS
(000 Omitted)

	1978	1979	1980	1981	1982	1983	1984
All Class I Motor Carriers[1]	$24,078,871	$26,558,469	$26,396,124	$27,904,486	$27,352,463	$28,326,858	$29,624,254
Ten Largest Motor Carriers[1]	$ 4,821,026	$ 5,468,178	$ 5,836,711	$ 6,190,455	$ 5,952,402	$ 6,846,628	$ 7,589,290
Ratio of Ten Largest to Total All Class I Motor Carriers	20.0%	20.6%	22.1%	22.2%	21.8%	24.2%	25.6%

[1] Excludes the two United Parcel Service carriers since their operations are dissimilar from the rest of the industry and are highly specialized, i.e. pickup and delivery of small packages. Total revenues of the UPS carriers for these years are as follows:

	United Parcel Service, Inc.	United Parcel Service, Inc. (NY)	Total UPS
1978	$1,938,868	$ 836,811	$2,775,679
1979	$2,321,633	$ 977,967	$3,299,600
1980	$2,789,834	$1,152,325	$3,942,159
1981	$3,289,780	$1,328,653	$4,618,433
1982	$3,501,929	$1,392,047	$4,893,976
1983	$3,991,481	$1,581,114	$5,572,595
1984	$4,453,462	$1,742,512	$6,195,974

SOURCE: All Class I Motor Carrier data from ICC Annual Reports to Congress.
Ten largest motor carriers data from ICC year-end quarterly earnings reports Form QFR.

Mr. **Lehman**. And now we will hear from our Ranking Minority Member, Mr. Coughlin of Pennsylvania.

Mr. **Coughlin**. Thank you very much, Mr. Chairman.

It is a pleasure, indeed, to welcome Chairwoman Gradison. She has been before us before but never as Chairwoman, and we certainly welcome her in that position.

I might observe that if she has her way this might be her first and last appearance as Chairwoman.

Mrs. **Gradison**. This is only my fourth hearing in four weeks. It is good to be here.

DEREGULATION LEGISLATION

Mr. **Coughlin**. We appreciate what you are doing. You are doing a fine job.

Do you know when the proposed legislation to deregulate the interstate motor freight, freight forwarder, and water carriers by 1 October 1986 will come out?

Mrs. **Gradison**. Unfortunately we do not know. We have not seen the actual legislative proposal. It is my understanding that the drafting has not yet been completed, and when it is completed, the Commission intends to play a role in a thorough review and with that, we would be happy to submit our comments to your record, and to you with our thorough comments on it.

But until we see that proposal, we are not in a position to comment, either I, as an individual, or as spokesman for the Commission.

Mr. **Coughlin**. Have you had any input into the legislation?

Mrs. **Gradison**. So far, no.

ICC SUNSET

Mr. **Coughlin**. As I understand it, you might not support eliminating the entire ICC in the next fiscal year.

Are there any parts that you would keep?

Or do you recommend keeping any parts?

Mrs. **Gradison**. Well, the rail functions must be preserved in some shape or form. There are some that could be eliminated but for the most part, the rail oversight functions must be retained. With regard to the motor carriers, the freight forwarders, the water carriers, I am of the opinion that that can be eliminated and probably at a great savings to the shipping public.

But with regard to rail we have to preserve much of that intact.

MOTOR CARRIER SAFETY

Mr. **Coughlin**. Just following on what the Chairman asked, the trucking industry indicates that it has yet to adjust to the impact of the 1980 Motor Carrier Act, and that this act has given unsafe operators access to the nation's highways.

How would you respond to those two points?

Mrs. **Gradison**. Well, that just is not so.

It is in the individual motor carrier's interest obviously, to operate safely and it appears that the competition with which the motor carriers have been faced, has put pressure on the trucking companies to get their costs in line and to improve their efficiencies and to put downward pressure on their inflated wages.

And I think that that is probably one of the biggest factors that affects the motor carrier industry and that has been one of the biggest elements that deregulation has provided: an opportunity for the motor carrier industry to become more in line with itself and with the overall economy with regard to having competitive wages.

Now, that its wages are competitive, the prices are more in line with what they should be.

Mr. **Coughlin**. And you do not see any safety impact on that——

Mrs. **Gradison**. No.

INSURANCE PROBLEM

Mr. **Coughlin** [continuing]. As a result of the Motor Carrier Act of 1980.

You mentioned that one of the major problems that the trucking industry was suffering was the question of the difficulty of obtaining insurance coverage. Is the ICC doing anything about this or is it in a position to do anything about this? Or does it have any recommendations as to what could be done about this?

Mrs. **Gradison**. We have any number of cases that are before us. I think that there are five or six cases that we are looking at with regard to insurance. The ATA has currently petitioned us requesting us to provide an opportunity for the motor carriers and the insurance industry to come together at the Commission to help work out their problems.

That is under review.

Jane Mackall, our Head of Proceedings can respond specifically to the insurance proceedings that we have before us.

Jane, do you have anything that you want to add?

Mrs. **Mackall**. We have one very broadly scoped proceeding where we are looking at all questions in insurance, and so far, we have approximately 200 comments, from motor carriers, shippers, insurance agents—the full gamut of the interests.

And one of the things the Commission has under consideration is the idea of allowing carriers to self-insure and there is one application before the Commission for decision now.

That is one way that the Commission can, if it chooses, help the motor carriers respond.

Mrs. **Gradison**. But let me add that self-insurance may be a short-term solution but it is not the solution to the overall liability insurance crisis. And it is one of the things that we are considering. I do not know whether or not the Commission will be able to approve it, but it is certainly something to be considered.

ICC ROLE IN INSURANCE PROBLEM

Mr. **Coughlin**. Do you see a role for the Commission in this area?

Mrs. **Gradison**. I was in a minority of the members of the Commission with regard to our pursuing anything beyond self-insurance. So speaking for myself, I think that we have a very limited role in this insurance crisis. We will do everything that we can to help them obtain the insurance that they need, or help the insurance industry recognize that the operating safety records of the carriers should be considered when the insurance companies decide to cancel the coverage that they currently provide. In other words, if a carrier has a very good safety record, it certainly should be one of the things that they consider before they cancel that coverage.

So, our role is very limited.

Mr. **Coughlin**. Short of legislation, what can the Commissioners do to reduce government controls?

How confident are you that any such actions would be upheld in court?

[The information follows:]

The major motor carrier-related function the Commission performs is the licensing one. That function has been streamlined considerably, and little additional saving to us or the industry is available. "Boilerplate" decisions risk judicial reversal and "master licensing" was specifically prohibited in the Motor Carrier Act of 1980.

Of course, elimination of the enforcement and monitoring functions would reduce government controls. However, most of this activity now is focused on safety and insurance. It is not clear whether administrative elimination of this function would be judicially affirmed, and we do not believe this would be in the public interest.

COMMISSIONER COOPERATION

Mr. **Coughlin**. It is no secret that there has been hostility among commissioners in recent years.

What does the new Chairwoman propose to restore a more collegial atmosphere?

[The information follows:].

While reports of dissension were exaggerated, we did have some disagreements which now seem to be resolved.

We are committed to working together. As Chairman, I am making and will continue to make, every effort to communicate directly with each member of the Commission to address both immediate and long term concerns.

Mr. **Coughlin**. Thank you, Mr. Chairman.

Mr. **Lehman**. Thank you, Mr. Coughlin.

Mr. Sabo?

GRAMM-RUDMAN SCHEDULE IMPACT

Mr. **Sabo**. Thank you Mr. Chairman.

And let me join the others in welcoming Mrs. Gradison and the ICC to the Committee.

What is your advice to us? Under Gramm-Rudman we have to have appropriations bills passed in the House by the end of June and I assume that we have to mark up in Subcommittee in May and in the full Committee in June.

What assumptions should we make?

Mrs. **Gradison**. Okay, my advice to you is that given the two budgets that you all are faced with implementing, if the authorizing legislation is not in place, the Commission needs a budget. There are functions that should be continued and I think the ICC, in spite of its reputation, does a darn good job of performing those functions.

So, my advice to you is to review this $48.3 million budget and pass it in as much of its entirety as you see fit, and my recommendation is darn close to that $48.3 million.

And in the event that the authorizing legislation is passed that you put up whatever it is, a notation at the bottom, should the authorizing legislation be passed, this authorization is hereby reduced to and that number would be——

Mr. **Lehman**. The appropriation would be reduced to——

Mrs. **Gradison**. Excuse me, the appropriations would be reduced to the number necessary to take care of the severance and the transfer of those functions.

And there seems to be a little bit of a disagreement between our review of the numbers that came out in the President's budget with regard to how much it would cost to transfer the ICC functions and our own analysis of how much it would cost.

I could provide those numbers for the record, but until we see what the Administration's proposal envisions, we cannot do a complete analysis of what those numbers should be.

So that puts you in a bind with regard to your time deadlines. We will attempt to do an estimation and give you the numbers.

ICC SUNSET IMPACT ON EMPLOYEES

Mr. **Sabo**. What happens to the employees in case you are terminated? Some are transferred?

Mrs. **Gradison**. Some are transferred, and some are severed. And some retire, because we are a 100-year-old agency, there are people at our agency who performed their entire careers at the ICC, and some of those folks would have skills that they would probably need to retrain in order to provide functions someplace else.

Mr. **Sabo**. Are they given any priority in terms of other federal openings?

Mr. **Guthrie**. With regard to the transfer of functions, the OPM rules essentially provide that those that are providing the functions transfer with the functions.

In regard to priority hiring, yes, government employees that have been previously employed elsewhere do have some priority in terms of hiring.

Mr. **Sabo**. But limited, I take it?

Mr. **Guthrie**. Yes.

Mrs. **Gradison**. You know it is a real concern. We have good employees, and we have hard working employees. And you know, we come to the Hill once every other week to defend our actions and it is hard to maintain morale. It is hard to get people to work and they do work but it is hard to encourage a team spirit when you have a zero budget in front of you.

And my goal is to encourage people to do the best job that they can do while we are here, and recognize that we may no longer be after the 1st of October, but to do a good job while the job is before them and take that same positive energy and transfer it someplace else.

ATTRITION RATE

Mr. **Sabo**. Are lots of people leaving early?

Mrs. **Gradison**. Well, the agency had a pretty high attrition last year because of our furlough situation. Can you address that?

Mr. **Guthrie**. As I recall, last year, the attrition rate was running in excess of about 10 percent. I think that it was upwards of 10, 12, or 13 percent early last summer. But it has varied from 8 to 10 percent on average over the last three or four years. And that seems to have remained rather constant.

Mr. **Sabo**. Thank you.

Mr. **Lehman**. Thank you, Mr. Sabo.

QUESTIONS SUBMITTED BY THE HONORABLE SILVIO O. CONTE

Mr. **Lehman**. I have some questions for the record, from Mr. Conte.

These will be for the record so that you can submit your answers.

Mrs. **Gradison**. That will be fine.

FIELD REORGANIZATION

Mr. **Conte**. Chairman Gradison, the Commission is proceeding on a major reorganization, involving a significant reduction in field offices and a reduction from six regional offices to three.

First of all, when was this reorganization approved by the Commission?

And what is the timetable for its implementation?

[The information follows:]

The reorganization was approved by a vote of the Commission on July 30, 1985, in an open public conference.

The full implementation of the reorganization, that is, consolidating the regional offices and reducing and relocating field staff, is expected to begin about August 1, 1986, and is to be completed by the end of the fiscal year. Since a number of administrative actions are necessary to complete the reorganization, these steps are already underway.

FIELD REORGANIZATION FIRST YEAR COSTS

Mr. **Conte**. What first year costs are associated with this reorganization?

Are you not going to run into major travel, relocation and termination expenses, among others?

Where is that money coming from?

[The information follows:]

One-time costs include relocation costs covering transfer of staff members who will fill vacancies at remaining offices, expenses of moving files from offices being closed to those that will be retained, and severance payments to the employees released from service.

There will be 15 to 20 Special Agent vacancies available under the new reorganization. The Commission intends to offer these positions to staff members in those offices being abolished. Relocation costs, which include any relocation-related travel and real estate expenses, are expected to be $250,000. Severance costs are projected to be approximately $550,000.

Because the implementation of the new organization will be completed during late FY 1986, these costs will be incurred during both FY 1986 and FY 1987. These one-time costs will be funded from savings in operating costs under the new organization. The estimated annualized savings is $1.8 million.

FIELD REORGANIZATION RATIONALE

Mr. **Conte**. What is the rationale for reducing the number of regional offices?

What savings are to be derived from that action alone, as opposed to the reduction in field offices?

And what are the costs associated with the regional consolidation?

[The information follows:]

In recent years, field work of the Commission has steadily decreased. This resulted from both reduced regulatory responsibility and a decreasing reliance by the public on Commission assistance. At the same time, staff levels have greatly declined. In 1983, the average staff level in each of the six regions was 60 full-time employees. Today, the average is 30 full-time employees.

The field reorganization was developed to bring the field structure in line with these scaled down operations. The specific mix of three regional offices and 19 field offices provides several benefits. Operations will be more efficient by eliminating overhead. At the same time, effectiveness will be maintained by preserving regional focus and control. Coordination of activities under the new structure should actually be enhanced.

The principal savings will be in the number of supervisory positions. Under the six region organization, there are a total of 26 top supervisory positions. Under the three region plan there will be 12 staff members with top supervisory responsibility, 14 less than required by the six region plan. Additionally, there will be other savings in that there will be fewer administrative positions under the three region plan. The total savings specifically associated with the reduction from six regional offices to three is estimated to be approximately $1,045,000.

The costs associated with the consolidation of the regional offices include severance pay for employees who will be separated from service, relocation costs for employees who will fill vacancies under the new organization, and costs of moving files from closed offices to those retained.

Costs specifically associated with the regional office reduction are estimated at about 40 percent of the total one-time cost of the entire reorganization. These amount to approximately $220,000 in severance costs and $100,000 in relocation expenses.

BOSTON REGIONAL OFFICE

Mr. CONTE. Chairman Gradison, with all due respects to my colleagues from the Philadelphia area, I am very concerned about your proposal to consolidate the Boston Regional Office into Philadelphia.

My understanding is that the Boston region has the highest concentration of carriers of any of the six regions, as well as being the focus for Canadian traffic—a matter of great concern for New England.

I just do not see how the benefits are going to outweigh the costs—both financial and human—of consolidating the Boston office into Philadelphia.

I wish you would take another look at that proposal.

[The information follows:]

I appreciate your concern about the proposal to designate Philadelphia as the Commission's Regional Office for the Eastern Region. It was a difficult choice for the Commission to choose between Boston, Philadelphia and Atlanta, since each city is a major transportation center.

A high volume of the Eastern Region's workload will come out of the New York field office, which is geographically closer to Philadelphia. The proximity of the two offices will provide greater flexibility in the use of staff. Philadelphia's location nearer the center of the Eastern Region also favors selection of this site for the regional office.

This is not to say that New England will be neglected. On the contrary. Even though some management and administrative positions in Boston will be eliminated, the professional and technical staff in this office after reorganization will remain at approximately the current number. This will ensure the continued ability to maintain a focus for Canadian traffic, and a continuation of the close working relationships that now exist between Canadian transportation officials and our Headquarters and Boston office staffs.

After carefully considering the distribution of regional workload and the need to remain flexible in the face of declining resources, Philadelphia was selected as the best alternative.

ICC SUNSET SCHEDULE

Mr. CONTE. Chairman Gradison, under the Airline Deregulation Act of 1978, provision was made for a multiyear sunset of the Civil Aeronautics Board.

Although some argued that the sunset period was too long, do you not think that some sort of phased shutdown of the ICC would be more appropriate than the cold turkey approach that the Administration seems to be proposing?

[The information follows:]

I believe that the five years of experience under the Motor Carrier Act of 1980 and the Staggers Rail Act have served as a sufficient transition to a more deregulated environment in rail and trucking regulation. Therefore, I support the concept and efficiencies of eliminating trucking regulation and transferring remaining rail regulation to the Department of Transportation and other agencies as of October 1, 1986. I believe an additional transition or phasing-out period would not be productive for carriers or shippers.

CHAIRMAN'S MAJOR PRIORITIES

Mr. CONTE. Chairman Gradison, could you tell us what your major priorities will be during your first year as Chairman of the Commission?

[The information follows:]

I intend to efficiently administer the Commission and process our current caseload consistent with our statute and regulations. In the short run, I plan to: (1) implement the Commission's reorganization plan; (2) reduce expenditures to meet our Gramm-Rudman Deficit Reduction budget cut; and (3) review all documents required by our agency.

I am also interested in further streamlining our regulation of motor carriers consistent with the law and eliminating functions or requirements that are not necessary. In the railroad area, my priority is to use the tools the Commission has finally put in place for captive shipper rates and access matters, and render final decisions in pending cases. Overall, I plan to support further legislative efforts to further reduce regulatory burdens on transportation especially where they serve no public purpose. The successful accomplishment of these goals will greatly facilitate the sunset of the Commission and a smooth transition of residual functions to other agencies. In the event the sunset legislation is not passed this year, I will continue to efficiently administer and streamline the Commission in its required functions.

DEREGULATION LEGISLATION

Mr. CONTE. To what extent will the ICC be involved in the preparation of the Administration's transportation deregulation legislation?

[The information follows:]

To date, the Commission has not seen a draft of the Administration's transportation deregulation and ICC sunset legislation.

We have offered to review, and anticipate commenting on the legislation; however, we do not know when we will see it.

STAGGERS ACT

Mr. **Conte**. In your view, in the absence of ICC sunset, is there any additional legislative clean-up that needs to be done on the Staggers Act?

[The information follows:]

I do not believe the Staggers Act requires any legislative clean-up. As can be seen from our recent actions in Ex Parte Nos. 320 (Sub-No. 3) and 445 (Sub-No. 1), the Act is flexible enough to permit administrative solutions to disputes, and we will continue to pursue this course as necessary to balance the interests of carriers and shippers.

FURLOUGH IMPACT 1985

Mr. **Conte**. Could you outline for us what the impact was on the ICC of last year's furloughs?

How were caseload, processing delays, and employee morale affected?

[The information follows:]

The impact of the furlough, which was in effect from April 15 through June 14, 1985, was felt far beyond the 8-week period. On March 1, 1985, employees were given specific notice that they would be furloughed starting in April. Consequently, some employees left the agency even before April 15th, in anticipation of the furlough. Also, even though the furlough was suspended on June 14, 1985, based on the progress of our supplemental through Congress, the Agency could not be assured of the appropriation until the President signed H.R. 2577 into law on August 15, 1985. Table 1 reflects this extended time period by presenting data on employee separations from the beginning of March through the end of August. The category does not include transfers to other agencies or retirements. Each office director reported employee morale was at an "all-time low". Many of the people who left the ICC to work at other agencies or who retired indicated that their reason for leaving was based on the furlough. Table 1 shows the number of employees by Bureau or Office who have either resigned, retired, or transferred to another agency. Total figures are also supplied.

TABLE 1

Bureau or Office	Resigned	Retired	Transferred to another agency	Totals
Commissioners' Offices	2		2	4
Managing Director	1		16	17
Secretary	3	8		11
General Counsel	1			1
Special Counsel	1		1	2
Transportation Analysis			1	1
Proceedings	2	2	5	9
Compliance and Consumer Assistance	5	9	17	31
Accounts	1	4	12	17
Traffic	2		5	7
Totals	18	15	67	100

In addition to employment levels, the furlough directly affected the timeliness of many Commission actions. Every bureau and office head reported increasing backlogs and inability to meet deadlines. Table 2 describes Commission proceedings and other actions that were delayed because of the furlough.

In the rail area, the Commission had the most difficulty meeting statutory deadlines in rail abandonment cases because the Staggers Rail Act imposed exceedingly tight deadlines on every phase of the abandonment process. The delays were usually brief and, thus, the impact on the public and the parties of delaying a decision, to grant or deny a proposed abandonment, was *de minimus*.

The Commission was also delayed, due to the furlough, in its consideration of two important rulemakings, Ex Parte No. 394 (Sub-No. 1), *Cost Ratio for Recyclables* and Ex Parte No. 445 (Sub-No. 1), *Intramodal Rail Competition.* The delay on these two rulemakings directly affected several proceedings and, as a result, caused the Commission to issue decisions extending the statutory deadlines, in these cases. Again, the impact of these extensions was *de minimis.*

In the motor area, the effect of the furlough was more readily apparent because the volume of cases, although more routine, is so much greater. At the end of the eight weeks, case processing was delayed at least three to four weeks and the backlog amounted to about 800 cases. Delays were experienced all along the chain of case processing. Applications were not being received by the Motor Section from the Secretary's Office until 15 to 20 days after filing. The pre-furlough norm was 7 to 10 days. There was a further delay of up to one week in sending cases to be published in the ICC Register due to furlough absences and the backlog from the Secretary's Office. There were also up to two-week delays, in many cases, in issuing effective notices and authorities.

Although the delays caused by the furlough were a tremendous inconvenience to applicants awaiting their authority, the motor section did not miss any statutory deadlines.

TABLE 2

CASES DELAYED DUE TO FURLOUGH

DOCKET NO.	TYPE OF DECISION	STATUTORY AUTHORITY	STATUTORY DEADLINE	SERVICE DATE
AB-1 (Sub-No. 163B)	Decision on merits after investigation	49 U.S.C. 10904(c)(3)	4/9/85	4/11/85
AB-1 (Sub-No. 174)	Certificate and decision for non-protested case	49 U.S.C. 10904(b)	5/20/85	5/21/85
AB-3 (Sub-No. 49)	Decision whether offer of financial assistance is bona fide	49 U.S.C. 10905(d)	5/6/85	5/13/85
AB-3 (Sub-No. 49)	Decision whether to hear appeal to initial decision	49 U.S.C. 10904(c)(3)	5/24/85	5/30/85
AB-3 (Sub-No. 49)	Certificate and decision after investigated case is granted	49 U.S.C. 10904(c)(3)	6/10/85	6/11/85
AB-3 (Sub-No. 54)	Waiver of regulations requiring overhead traffic data	49 U.S.C.10904; 49 U.S.C. 1152.24(e)(5)	5/17/85	5/20/85
AB-6 (Sub-No. 236b)	Decision on merits after investigation	49 U.S.C. 10904(c)(3)	5/28/85	7/8/85
AB-6 (Sub-No. 242)	Decision on merits after investigation	49 U.S.C. 10904(c)(3)	6/14/85	6/17/85
AB-6 (Sub-No. 251	Decision setting opposed case for modified procedure	49 U.S.C. 10904(c)(1)	5/9/85	5/10/85
AB-8 (Sub-No. 8)	Decision whether to hear apeal to initial decision	49 U.S.C. 10904(c)(3)	6/21/85	6/14/85
AB-12 (Sub-No. 79)	Decision setting opposed case for modified procedure	49 U.S.C. 10904(c)(1)	6/10/85	6/17/85
AB-12 (Sub-No. 80)	Decision setting opposed case for modified procedure	49 U.S.C. 10904(c)(1)	6/10/85	6/17/85
AB-19 (Sub-No. 100)	Certificate and decision after investigated case is granted	49 U.S.C. 10904(c)(3)	7/1/85	7/2/85

DOCKET NO.	TYPE OF DECISION	STATUTORY AUTHORITY	STATUTORY DEADLINE	SERVICE DATE
AB-43 (Sub-No. 116)	Petition for stay	49 U.S.C. 10904(c)(3); 49 C.F.R. 1152.25(e)(9)	5/23/85	5/28/85
AB-43 (Sub-No. 128)	Decision rejecting application	49 U.S.C. 10904; 49 C.F.R. 1152.24(e)(2)	6/17/85	6/18/85
AB-52 (Sub-No. 37)	Decision on merits after investigation	49 U.S.C. 10904(c)(3)	5/24/85	6/11/85
AB-55 (Sub-No. 135)	Decision on merits after investigation	49 U.S.C. 10904(c)(3)	6/7/85	6/13/85
AB-131 (Sub-No. 1)	Certificate and decision for non-protested case	49 U.S.C. 10904(c)(2)	6/10/85	6/11/85
F.D. 30214	Request to enter into car service and car hire pooling agreement covering general service freight cars under 49 U.S.C. 11342(a)	49 U.S.C. 10327(k)	5/31/85	7/5/85
F.D. 30500	Railroad acquisition of control of motor carrier under 49 U.S.C 11343 and 11344	49 U.S.C. 11345(c)	5/1/85	5/13/85
No. 39784	Appeal to decision in complaint case involving rates on non-ferrous recyclables	49 U.S.C. 10327(f)(2)	7/23/85	Pending
No. 39795	Appeal to decision in complaint case involving maximum rate reasonableness	49 U.S.C. 10327(f)(2)	7/14/85	7/15/85
No. 39812	Appeal to decision in complaint case involving rates on non-ferrous recyclables	49 U.S.C. 10327(f)(2)	7/15/85	Pending
No. 39816	Appeal to decision in complaint case involving tariff applicability	49 U.S.C. 10327(f)(2)	7/16/85	7/18/85

DECISIONS EXTENDING STATUTORY DEADLINES DUE TO FURLOUGH

DOCKET NO.	TYPE OF DECISION	STATUTORY AUTHORITY	STATUTORY DEADLINE BEFORE EXTENSION	SERVICE DATE OF DECISION EXTENDING DEADLINE
No. 39176 (Sub-No. 2)	Appeal to decision in complaint case involving intramodal rail competition	49 U.S.C. 10327(f)(2)	5/14/85	5/14/85
No. 39639	Appeal to decision in complaint case involving rates on shipments of non-ferrous recyclables	49 U.S.C. 10327(f)(2)	4/15/85	6/5/85
No. 39647	Appeal to decision in complaint case involving rates on shipments of non-ferrous recyclables	49 U.S.C. 10327(j)	4/26/85	5/1/85
No. 39669	Appeal to decison in complaint case involving rates on shipments of non-ferrous recyclables	49 U.S.C. 10327(f)(2)	5/13/85	6/5/85
No. 39686	Appeal to decision in complaint case involving rates on shipments of non-ferrous recyclables	49 U.S.C. 10327(f)(2)	6/10/85	6/5/85
No. 39706	Appeal to decision in complaint case involving rates on shipments of non-ferrous recyclables	49 U.S.C. 10327(f)(2)	5/7/85	6/5/85
No. 39799	Appeal to decision in complaint case involving tariff applicability	49 U.S.C. 10327(f)(2)	8/9/85	8/9/85
No. 39811	Appeal to decision in complaint case involving tariff applicability	49 U.S.C.10327(f)(2)	5/21/85	5/21/85

OTHER ACTIONS DELAYED DURING THE FURLOUGH PERIOD

ACTIONS MISSED	NO. OF MISSES	STATUTORY CITE
Completing audits of Class I Railroads on schedule	8	49 U.S.C. 11144
Preparing the Rail Form A's to cost the 1983 waybill sample for calculating the 1985 Cost Recovery Percentage	2	49 U.S.C. 10709(d)
Completing the 1982-1983 Motor Carrier Regional Cost Study	1	49 UCS 10701(e) & 10708
Completing the Audit Data Retrieval Program	1	None specifically: supports authorized in 49 USC 11144
Revising the Uniform Railroad Costing System (URCS) for the change to depreciation accounting	1	49 USC 11166
Preparing data for 1984 URCS application	1	
Preparing the 4th quarter earnings report for Class I railroads and the 100 largest motor carriers of property	2	None
Completing the report updating anlayses of financially distressed railroads	1	None
Tariff review prior to effective date Compliance action regarding defective tariffs	120,000 750	49 USC 10761, 10762, 10734(e), 49 USC 10762(e)
Prompt response to inquiries regarding tariff publications	120,000	49 USC 10761, 10762, 10734(a), 10744, 10722

ACTIONS MISSED	NO. OF MISSES	STATUTORY CITE
Prompt response to request for relief from tariff regulations	70	49 USC 10762(d)(1)
Distribution to public of new tariff filings within 2 workdays of receipt	Avg. 5 workdays May-Aug. for distribution	49 USC 10761, 10762
Review of filing of Freight Forwarder Contract with 7 workdays	Avg. 14 workdays May-July for review	49 USC 10766
Prompt review and distribution of rail contracts and summaries, and response to inquiries within 2 workdays	Avg. 4 workdays May-July	49 USC 10713
Prompt and accurate maintenance of official tariff file, insuring files are in proper and accessible order for use by the public and ICC staff	Delayed necessary action for four months	49 USC 10762
Timely clearance of various Commission Decisions-Meeting statutory deadlines	50	49 USC 10327, 49 USC 10322
Timely processing of motor carrier applications	800	49 USC 10322
Timely posting of insurance data to clear carriers authority	4,000	49 USC 10927 (49 CFR Part 1043)
Timely posting of cancellaiton notices to be effective 30 days from the date of receipt by Commission	3,000	49 USC 10927 (49 CFR Part 1043)
Timely processing of insurance billings for a four-month period	2,800	31 USC 9701 (49 CFR Part 1043)
Timely processing of certification requests	300	49 USC 10303

GRAMM-RUDMAN CUT IMPACT

Mr. **Conte**. What is the impact on the ICC of the cuts mandated under Gramm-Rudman and projected to take effect on March 1st?

[The information follows:]

The FY 1986 impact of Gramm-Rudman reductions was $2,072,000 and 38 staff-years. These reductions were applied to the staff-year and funding levels contained in the Conference Report accompanying the FY 1986 Continuing Resolution, P.L. 99-190. The Commission will absorb these reductions through planned reorganization of offices, reduction of the field structure and cost-savings associated with the continuing turnover and attrition in staff.

MOTOR CARRIER SAFETY

Mr. **Lehman**. The American Trucking Association argues that deregulation will have a direct effect on truck safety. They say that deregulation will enormously increase the competitive pressure on trucking companies to reduce their costs, which will show up in the form of lower equipment maintenance, older truck fleets, and drivers driving longer hours.

When entry requirements were eased in 1980, the number of trucking firms with ICC authority increased dramatically—from 18,000 in 1980 to about 31,000 in 1984.

Have you seen any evidence of truckers' shortchanging their maintenance to meet the demands of this greatly increased competition in this time period? And would this become an even greater problem under the administration's bill?

Now, some of this question is covered in some of your previous answers, but I would just like you to reiterate and expand on what you have already said.

Mrs. **Gradison**. Well, we did see a blip in motor carrier safety problems in 1984, but beyond that, the record of motor carrier safety since 1980 has been very good. As I stated before, it is in the carrier's interest to have safe operations.

It is in the carrier's interest to have insurance and while the Commission's oversight role with regard to safety is limited and the Bureau of Motor Carrier Safety has the lead role in that, from our vantage point, we do not see any evidence that maintenance is being curtailed.

Mr. **Lehman**. And it will not be under the administration's bill?

Mrs. **Gradison**. No, sir.

INTERSTATE TRUCKING CARRIER NUMBERS

Mr. **Lehman**. Do you have an estimate of how many interstate trucking carriers would be in business under the Administration's bill compared to the current number?

Mrs. **Gradison**. Let us see, during the first year following the Motor Carrier Act of 1980, grants of permanent authority to new applicants including new entrants and existing carriers receiving new types of authority, were approximately 200 a month.

Since that time, the number of grants to new applicants has increased to approximately 580 a month. Since entry barriers were significantly lowered by the Motor Carrier Act, we do not anticipate any significant increase in the rate of new entrants if the Administration's trucking deregulation bill is enacted.

INTERSTATE TRUCKING CARRIER FAILURES

Mr. LEHMAN. You see how many people are going into the business. How many are going out of business a month?

Mrs. GRADISON. I cannot——

Mr. LEHMAN. You do not have it?

Mrs. GRADISON. Does anybody have that answer?

Mr. LEHMAN. For the record.

Mrs. GRADISON. We will try to answer that for the record.

The insurance is probably the biggest factor with regard to folks going out of business right now.

Mr. LEHMAN. Any business, whether you are a surgeon or whether you are a truck driver.

[The information follows:]

Dun and Bradstreet (D&B) data on the number of intercity trucking failures, including intrastate companies, and on total U.S. business failures are as follows:

Year	Intercity trucking failures (SIC 4213)	Total U.S. business failures
1974	74	9,915
1975	93	11,432
1976	82	9,628
1977	57	7,919
1978	56	6,619
1979	67	7,564
1980	125	11,742
1981	193	16,794
1982	293	24,908
1983	495	31,334
1984	549	(1)
1985 (1st six months)	338	(1)

[1] Data on total U.S. business failures in 1984 and after cannot be compared with data reported in previous years. Beginning in 1984, the Dun Bradstreet Corporation revised its collection system to include many industries in the U.S. economy which had been previously excluded.

TRUCKING DEREGULATION AND SERVICE TO SMALL COMMUNITIES

Mr. LEHMAN. There were also fears when the trucking industry was partially deregulated in 1980 that service to small communities would suffer.

Has this happened to any appreciable degree, and do you think this could be a potential problem under the adminstration's bill?

Mrs. GRADISON. No, sir, it has not happened to any appreciable degree. In fact, we have found that service to smaller communities has actually improved and we anticipate no significant change in the quality or quantity of services to those communities under the administration's bill.

TRUCKING DEREGULATION AND NEW STATE REGULATION

Mr. LEHMAN. The administration's bill also would prevent states from imposing new regulations on operations that previously were regulated by the ICC.

Do you support this proposal?

If so, what role would you envision for state regulatory commissions—should they also be sunsetted?

Mrs. GRADISON. I have a long answer on that one. The Commission has taken a rather strong stand. States should regulate in a fashion consistent with Federal policy. They should not be permitted to undo through restrictive regulation of interstate matters, what Congress has determined to be in the national interest. State preemption must be addressed in any deregulation legislation for motor carriers, to deregulate at the Federal level without addressing problems of burdensome state regulation is not sufficient.

Section 61 of the DOT bill prohibits states and other political agencies from enacting or enforcing any regulation concerning interstate rates, routes, or services, once the Federal Government withdraws from the field.

This approach, not allowing the states to fill the ICC void is a good minimum. Optimally, to achieve uniformity of regulation and to avoid burdensome state regulations, state economic regulation of trucking should be preempted.

States should continue to exercise police powers in addressing problems that are uniquely their own, but beyond that, their role should be eliminated.

Mr. LEHMAN. I went to visit a trucking company in my district, and it is not exactly comparing apples to oranges, but he parked his personal car—the president of the company—by a truck and he said, "I have a Florida tag on my car" and he said, "look at this truck with all the tags on it. I can drive my car from here to California without any problem, but I have to buy a tag in nearly every state I drive through if I take this truck out there."

Mrs. GRADISON. It is a real problem. And it should be addressed at the Federal level and it should be addressed soon.

INSURANCE PROBLEM

Mr. LEHMAN. The national insurance crisis is reported to have hit especially hard in the trucking industry.

How serious is this problem, and what effect is it having on the financial health and safety of the trucking industry?

[The information follows:]

The crisis in liability insurance is quite serious, and it is having a substantial effect on the trucking industry. Insurance premiums have increased for commercial automobile bodily injury and property damage (BI&PD) coverage to the point that many motor carriers can no longer remain in business. Many insurance companies also have severely limited the number of carriers they will underwrite, and others have withdrawn completely from commercial BI&PD business. Since 1983, six insurance companies that insured motor carriers became insolvent. Two of these companies have entered into liquidation since December 1985. These two had certificates of insurance on file with the Commission covering over 1200 motor carriers. This, then, places the carriers in the tenuous position of searching for coverage from among a reduced number of remaining sources.

INSURANCE PROBLEM AND FEDERAL ROLE

Mr. LEHMAN. Do you think that the insurance problem requires federal action, or is it something that is best left to the states and the affected industries to work out?

[The information follows:]

I do not believe personally that the Federal Government can be instrumental in solving this problem. However, I do think, as does a majority of the Commission (as evidenced by our ongoing review of the problem in the proceeding in Ex Parte No.

178, Investigation Into Motor Carrier Insurance Rates) that the Federal Government has a role to play in addressing the situation. The government's proper role may be only to assist the States and the motor carrier industry in developing market-based responses. The Commission is also taking a hard look at its own insurance-related programs and regulations to determine whether they are helping or hindering the resolution of this problem.

INSURANCE PROBLEM RULEMAKING

Mr. **Lehman**. Please provide for the record a summary of the goals, objectives and timetable of Ex Parte No. MC-178.

[The information follows:]

Ex Parte No. 178, Investigation into Motor Carrier Insurance Rates, is a rulemaking, instituted in November 1985, to explore both the problem and ways in which the Commission could be instrumental in alleviating the problem. Over 200 responses had been received when the record closed on December 2, 1985. The Commission is now studying that record, as well as coordinating this case with the related cases discussed below.

Ex Parte No. 178 (Sub-No. 1), Petition for Investigation of Insurance Surcharges, filed November 13, 1985. An owner-operator group seeks rules to require carriers to share insurance surcharge revenue with their owner-operators.

Ex Parte No. 178 (Sub-No. 2), Petition for Rulemaking of the American Bus Association concerning Enforcement of Minimum Insurance Standards, filed November 22, 1985. ABA seeks a new procedure for enforcing the new higher insurance limits for bus carriers.

No. MC-128527, May Trucking Company—Application to be a Self-Insurer, filed September 30, 1985. This application was denied on December 9, 1985, but May has filed a petition to reopen.

All of these cases are being coordinated and we expect to issue decisions shortly.

INSURANCE OVERSIGHT BY ICC

Mr. **Lehman**. The ICC is responsible for ensuring that truckers under its jurisdiction have adequate insurance.

How many carriers are you catching a year with insufficient insurance? And are you reasonably confident that you have a system in place that is not allowing a significant number of carriers to slip through the cracks?

In other words, how do you find out that some trucking company's insurance has suddenly been cancelled?

Mrs. **Gradison**. We have a good system. Let me explain how it works. Actually, we recently had an insurance oversight hearing and in that hearing Bernard explained how the process works.

Bernard, can you just briefly cover that?

Mr. **Gailliard**. Sure.

Mr. Chairman, the Commission's system, has two facets to it. One is a system on the enforcement side that is designed to keep uninsured motor carriers off the road and the other side is designed to remove the carrier's operating permit.

But essentially, it is a computer generated system. As you know, when the Commission grants authority, a prerequisite to the issuance of the certificate or permit is that a carrier must come into compliance with his insurance requirement. So before a carrier gets his authority to operate in the first instance, he must have operating insurance on file.

Such filings are accepted on the condition that the insurance companies must give the Commission notification of the cancellation of that policy, 30 days in advance of that action.

Mr. **Lehman**. You have answered my question.

Mr. **Gailliard**. That is good.

OPERATING AUTHORITY REVOCATIONS—SAFETY

Mr. **Lehman**. The ICC also has authority to revoke a carrier's operating authority because of a poor safety record. Yet, according to comments made by former Chairman Taylor last September, the ICC has not revoked a single carrier's permanent operating authority solely on safety grounds since 1967.

Why has the Commission not been tougher on enforcing this safety responsibility?

Or do you have a safety problem?

Mrs. **Gradison**. Revocation of operating authority is used as a last resort. We have different elements within the statute that we must address. One prerequisite to a carrier receiving authority is to be fit, willing and able and then if the carrier is not operating in a safe manner, then it can be revoked.

Section 10925(c)(1) further provides that the Commission may revoke the certificate after it issues an order to the carrier requiring compliance with the statute, regulation or condition and the carrier has willfully failed to comply.

Under Section 10925(c)(3) the carrier has 30 days with which to comply and then failure to comply after that notice constitutes the willful violation of a Commission order, which would support revocation under Section 10925(c)(1).

Because the DOT has jurisdiction over motor carrier safety matters, the Commission has to rely on the Department to introduce evidence pertaining to the carrier safety.

So, we do revoke the operating authority. We do it in rare instances. We do attempt to give the carrier every opportunity to bring himself in line with the requirements and that is one of the reasons that we have so few revocations.

Some times we do also suspend the certificate pending getting insurance. But we have had quite a few revocations as a result of not having insurance.

OPERATING AUTHORITY REVOCATIONS LAST YEAR

Mr. **Lehman**. Mr. Coughlin?

Mr. **Coughlin**. How many revocations did you have last year?

Mrs. **Gradison**. May I provide that for the record?

Mr. **Gailliard**. A little in excess of 2,000.

Approximately 2,100 for insurance alone.

Mr. **Coughlin**. Any based on safety?

Mr. **Gailliard**. No, those are for insurance alone.

Mr. **Coughlin**. But none based on safety?

Mr. **Gailliard**. There were some revocations based on safety in prior years, but I do not remember the number, but there were very, very few.

[The information follows:]

In the past year, the Commission has not revoked any certificates for safety reasons alone. However, since the beginning of 1985, the Commission has denied three authority applications for safety reasons.

OPERATING AUTHORITY SAFETY CRITERIA

Mr. **LEHMAN**. Are you satisfied with the Commission's record on this area of policing safety?

Mrs. **GRADISON**. Yes, sir.

Mr. **LEHMAN**. According to the House Government Operations Oversight Subcommittee, the Commission has approved licenses for some trucking firms that have an "unsatisfactory" safety rating from the Bureau of Motor Carrier Safety.

The chairwoman of that subcommittee, Rep. Cardiss Collins, has charged that this is sending a message to the carriers that "they can get away with [being unsafe]." Why are you approving licenses for truckers rated "unsatisfactory" by the BMCS?

Mrs. **GRADISON**. We are not. In some instances, we provide an opportunity for the carrier to go back to Bureau of Motor Carrier Safety, and get a satisfactory rating from the Bureau of Motor Carrier Safety, and once he has proven that he does have a satisfactory rating, then we will issue the authority.

And we had a case just like that yesterday, where we gave the man an opportunity to go back to DOT/BMCS, and get that satisfactory rating, and once he gets that rating, then the authority goes into effect; but we are not—let me make it clear—issuing operating authority to people with unsatisfactory ratings, and we are working very hard at making sure that we check that rating with the DOT, and that we do not by mistake issue authority.

MOTOR CARRIER DATA COLLECTION

Mr. **LEHMAN**. For several years, the Committee has directed the Commission to retain financial reporting requirements for contract motor carriers and Class II common carriers until an industry-sponsored study and rulemaking action in this area are completed. Do we have your commitment to continue this data collection effort?

Mrs. **GRADISON**. That is before the Commission, and it is under study, and I would be happy to provide the answer for the record, after we do reach a conclusion on it.

Mr. **LEHMAN**. Then I take it we do have your commitment to continue this data collection effort?

Mrs. **GRADISON**. It is before the Commission.

Mr. **LEHMAN**. Until——

Mrs. **GRADISON**. Until that time; yes, sir.

SAFETY FITNESS PROCEDURE STATUS

Mr. **LEHMAN**. The Motor Carrier Safety Act of 1984 requires a new safety fitness procedure that is more stringent. This procedure was supposed to be submitted by DOT to Congress by October 1985.

What is the status of this procedure?

Has the ICC worked with DOT in its preparation? And are you satisfied with it?

[The information follows:]

The Bureau of Motor Carrier Safety has not yet issued revised safety fitness regulations. At their request, staff in our Offices of Proceedings and Compliance and Consumer Assistance have reviewed draft regulations and provided comments informally. In addition, the Office of Proceedings has evaluated the Commission's existing licensing and safety fitness regulations procedures, and application materials to identify those rules and practices that may require revision to conform with the Bureau of Motor Carrier Safety's new safety certifications.

We have been informed that a draft of the proposed procedures has been sent to the Office of Management and Budget for approval.

OPERATING AUTHORITY SAFETY ENFORCEMENT

Mr. **Lehman.** Under the Administration's deregulation bill, what will become of the ICC's authority to enforce safety standards through the issuance of operating authority licenses?

[The information follows:]

The Department of Transportation's bill provides for elimination of all the ICC's safety fitness for motor carriers.

Mr. **Lehman.** Mr. Coughlin, do you have any further questions on trucking regulation?

Mr. **Coughlin.** No, sir.

Mr. **Lehman.** I would yield to you for the rail deregulation questions, if you would like to ask something.

STAGGERS ACT REVISION

Mr. **Coughlin.** The administration is not proposing any additional deregulation of the railroad industry. They would simply transfer the ICC's responsibilities in this area to the Departments of Transportation and Justice.

On the other side of this issue, there is an organized effort by a coalition of coal, utility, and agricultural interests, known as CURE, to convince Congress to reopen the Staggers Act and re-regulate some of its provisions.

We will talk about some of the specific issues shortly, but, in general, do you agree with Secretary Dole, or with CURE, on the need to revisit the Staggers Act?

Mrs. **Gradison.** I think the Staggers Act is working; it is working well. I think that the Commission has a fine record of being upheld by the courts.

I think that we stand falsely accused by the folks outside of the Congress who support CURE, and I feel that the Commission should be given an opportunity to now provide the results on the coal cases that are before us. Time and again, reference has been made to 800 cases and the 800 "section 229" cases, and the fact that we have not provided a single shipper refund for those cases, and the facts are that over 750 of those cases have been settled, and over 750 of those cases have been settled agreeably to the shipper, and the carrier.

So therefore, based on that record alone, I think that the Secretary is correct.

Mr. **Coughlin.** Do you think that, over time, the railroad industry should be deregulated further? If so, in what areas?

Mrs. **Gradison.** I think we are going to stick with what we have for now.

SHIPPER PROTECTION

Mr. COUGHLIN. Many are concerned that DOT has historically been "pro-railroad" in its outlook, and that they cannot be counted on to adequately protect shipper interests.

Former Chairman Taylor must think similarly, since he recently called for the establishment of a new Federal Railroad Commission to handle the ICC's rail functions instead of turning them over to DOT.

Do you believe the ICC's rail functions should be folded into the Department of Transportation or be continued as part of an independent regulatory agency?

Mr. LEHMAN. That's the biggest question of the day, isn't it?

Mrs. GRADISON. Yes, and I keep tossing it back to you all, whether it is at the ICC, the DOT, or the Justice Department, is up to you.

With regard to the DOT being prejudiced, as being "pro rail," I think that the most important consideration with regard to CURE legislation, or transfer of ICC functions, is that the shippers are the ones that need to be served, and a healthy rail transportation system is what provides that service for those shippers.

If we do not have a healthy rail system, we do not have a transportation system for those shippers, and I think that the Staggers Act recognized that we had problems with the rail service that was being provided to the shipping community. The Staggers Act addressed those problems, and I think we now have a much healthier rail system.

It took a long time for the rail system to deteriorate to the level that it was in in the late 1970's, and it has taken a very quick—it has improved very quickly as a result of this legislation, and not to filibuster, I will simply summarize by saying, we could lose those gains if we go back to legislation and regulatory structure that we had prior to the improvement of these carriers' financial conditions.

COAL RATES

Mr. COUGHLIN. I, of course, come from a coal state and in fact used to work in the coal mines. A major issue among those who think that rail deregulation has gone too far concerns coal rates.

Some utilities and coal shippers argue that the rate flexibility the Commission has provided to the railroads is too great, and that they are consequently being gouged by large rail rate increases.

The railroads, on the other hand, argue that their coal rates have not increased as rapidly as the price of coal itself, nor have rail coal rates increased at any higher rate than the rates for other commodities.

Who is right?

Mrs. GRADISON. Well, the analysis undertaken at the Commission indicates that when inflation is taken into account, revenue per ton mile derived from coal transportation has shown little or no increase over the past decade.

The Department of Energy's recent independent review of coal rates, which was titled "Effects of Railroad Regulatory Reform on

Coal and Electricity" supports the Commission's observation, and the DOE concludes that the rail industry has not exploited coal traffic.

And let me say that the Commission is unanimous in its devotion to providing fair and equitable rates to captive shippers, and as we review these coal cases that will be coming before the Commission, God willing this spring, I think that we have a fair system in place with regard to our coal rate guidelines, and that using those guidelines will show that those guidelines work, and that we can come up with fair and equitable rates for captive shippers.

Mr. **Coughlin**. And do you agree with the Commission's recommendations?

Mrs. **Gradison**. Yes, sir.

COAL RATES AND ELECTRICAL UTILITY RATES

Mr. **Coughlin**. Do you believe the railroads' coal rate increases after Staggers are chiefly responsible for the significant electrical utility rate increases that we have seen in the past few years?

Mrs. **Gradison**. Indications show that that just simply is not the case. Utility rates have increased over the past decade.

The increases are partially attributable to rising transportation costs and partially attributable to other influences, including several years of rapid inflation and higher world energy costs.

From 1973 to 1983, rail revenues from coal tripled. At the same time, the price of coal at the mine was increased nearly fivefold. Thus, many factors, ranging from inflation to OPEC, have led to higher utility rates.

COAL RATE GUIDELINES

Mr. **Coughlin**. Please provide for the record a summary of the Commission's recently issued guidelines on maximum reasonable rates for coal shipments.

[The information follows:]

In Ex Parte No. 347 (Sub-No. 1) Coal Rate Guidelines, Nationwide, served September 3, 1985, the Commission adopted "constrained market pricing" (CMP) as the means of regulating market dominant coal traffic. The objective of CMP is to determine the rate that would be charged if the railroad were fully efficient and/or were pricing its service in a competitive environment.

This decision subjects the railroads' pricing practices to the following four limiting constraints:

Revenue adequacy.—Under CMP, revenue adequacy provides one limit on a railroad's pricing. A railroad has adequate revenues if it earns a return on its net investment base equal to the current cost of capital. At that level, it can fully cover its costs and raise needed capital.

Management efficiency.—Individual railroad's revenue requirements can be adjusted to eliminate any revenue needs resulting from demonstrated carrier inefficiencies. Three kinds of potential inefficiencies have been identified: operating, pricing, and investment inefficiencies.

Stand-alone cost.—An alternative constraint under CMP is the rate that would be charged by a hypothetical efficient competitor. The stand-alone system may include any traffic (captive and competitive) that the competitor would seek to attract to gain the cost economies of sharing the facilities. Of course, its stand-alone rates would reflect the revenue contribution made by the other shippers served.

Parties have broad flexibility to construct whatever stand-alone scenario would represent the most efficient, and hence least-cost, alternative. But the feasibility of the stand-alone system, as well as the validity of the cost estimates and revenue projections, must be fully supported.

Phasing.—When a proposed rate level is reasonable under the tests described above, the Commission may consider if the increase should be taken in stages to avoid serious economic dislocations. If phasing is necessary, the degree would be tailored to the situation. The Commission would consider such factors as the magnitude of the increase, the financial condition of the carrier, and the impact on consumers and/or coal producers.

CONSTRAINED MARKET PRICING

Mr. COUGHLIN. The Commission recently issued new coal rate guidelines, which, as we understand it, revolve around a new standard called "constrained market pricing." Under this standard, the shipper must simulate, by modeling, a hypothetical alternative transportation system with which to compare the actual service and rates provided by the railroad whose rates are being challenged.

Such simulations have been criticized as being unrealistic and inconclusive; an exercise that will please only the consultants and lawyers, who can argue endlessly about the validity of the assumptions used in these models.

In your view, will these simulations work—are they realistic enough to prove whether a rate is reasonable?

Mrs. GRADISON. Yes. They will work. The final guidelines developed in Ex Parte 347 (Sub-No. 1) have recently been applied in a case decided by an ALJ, Docket 38-783, Omaha Public Power District versus Burlington Northern.

It was served on the 15th of January of this year. The first application of the guideline shows that stand-alone costs can be used to adjudicate maximum rate cases.

Based on the evidence submitted in this case, and other pending cases, we believe that the coal rate guidelines are workable and yield equitable results.

CAPTIVE SHIPPER RATE REASONABLENESS

Mr. COUGHLIN. According to a recent GAO analysis, the ICC has ruled that railroads had "reasonable" rates in 40 of the 61 captive shipper rate cases it has reviewed since enactment of the Staggers Act.

Does this high decision rate in favor of the railroads indicate that the railroads have been exceedingly fair to the captive shippers, or does it indicate a flaw in the methodology used by the Commission to judge the reasonableness of those rates?

Mrs. GRADISON. Well, we do not know what cases that the GAO refers to. I have their report right here. While many of the decisions on market dominance and reasonableness have been made, most of those cases are awaiting decision under 347(1) guidelines, so therefore, the number, forty, may not reflect the Commission's ultimate decision.

As a general matter, I can say that in the one case that the Agency has used the new rules, a considerable rate reduction to the shipper was ordered.

And we do not think that the standards are biased, and we do think that they will provide balanced results. So, my summary is, let's give these guidelines a chance to see if they work because we, as a Commission, feel that they will.

Mr. **Coughlin**. Do you expect the Commission's "rate reasonableness" decisions to be more evenly balanced between the shippers and railroads under your new guidelines?

[The information follows:]

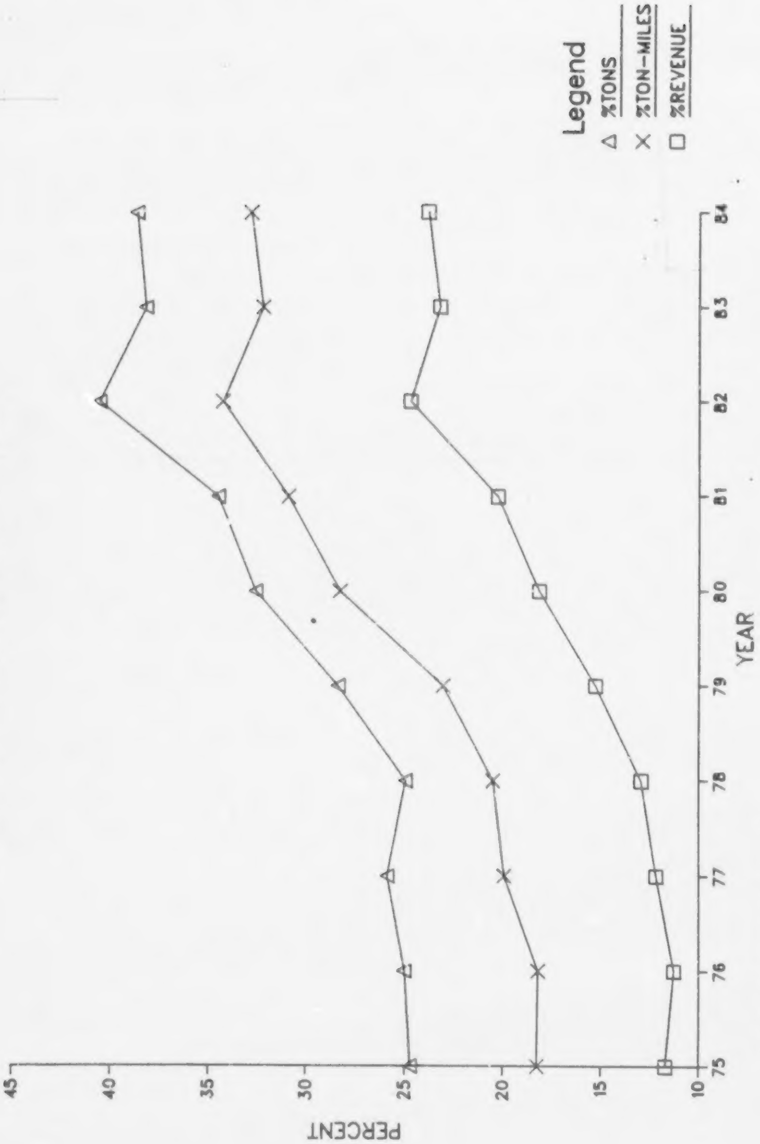
This depends on the type and quality of evidence presented in each case. Overall, the simulated competitive price which the guidelines will produce should approximate rates being charged for competitive coal traffic. Therefore, rate reductions may well occur in many cases.

COAL PRODUCTION PRICES AND RATES

Mr. **Coughlin**. Please update for the record the data on coal production prices and rates, railroad and coal inflation, and coal share of rail tonnage and revenue found on pages 768 through 774 of last year's hearing record.

[The information follows:]

COAL TRAFFIC AS PERCENT OF TOTAL RAIL TRAFFIC TONS, TON-MILES, AND REVENUE



SOURCE: ICC WAYBILL SAMPLE

Comparison of All Rail Traffic and Coal Traffic (1975 - 1983)[1]

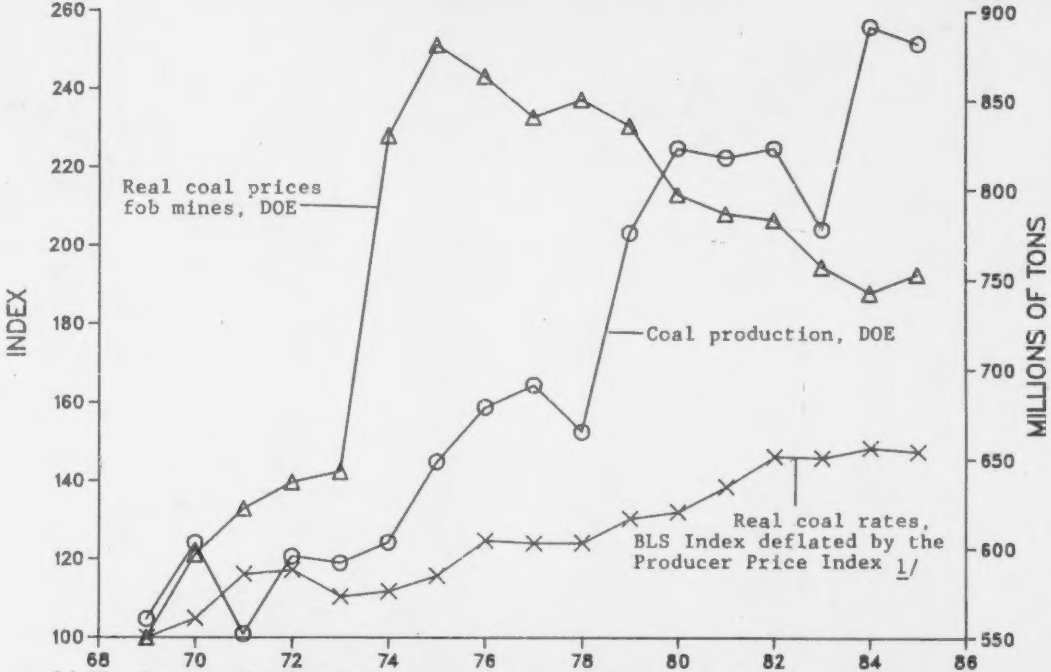
	All Rail Traffic (in billions)			Coal Traffic (in billions)			Percent Coal of All Traffic		
Year	Tons	Ton Miles	Rev	Tons	Ton Miles	Rev	Tons	Ton MIles	Rev
1984	1.444	805.2	27.8	.5596	265.1	6.639	38.75	32.92	23.88
1983	1.291	728.8	24.63	.4940	235.2	5.730	38.26	32.27	23.26
1982	1.257	705.7	24.18	.5103	242.3	5.988	40.60	34.33	24.76
1981	1.362	673.8	25.47	.4705	208.6	5.165	34.54	30.96	20.28
1980	1.406	677.3	23.01	.4588	191.7	4.176	32.63	28.30	18.15
1979	1.411	673.3	21.05	.4006	155.3	3.218	28.39	23.07	15.29
1978	1.317	623.4	17.87	.3287	127.9	2.315	24.96	20.52	12.95
1977	1.256	569.2	15.96	.3249	113.5	1.945	25.87	19.94	12.19
1976	1.263	552.6	14.77	.3158	100.5	1.665	25.00	18.19	11.27
1975	1.194	506.1	12.73	.2949	92.35	1.489	24.70	18.25	11.70

---

[1] Information generated from the waybill sample.
1975 through 1981 Waybill Sample processed by Federal Railroad Administration.
1982 Waybill Sample processed jointly by Federal Railroad Administration and Interstate Commerce Commission.
1983 and 1984 Waybill Sample processed by the Interstate Commerce Commission.

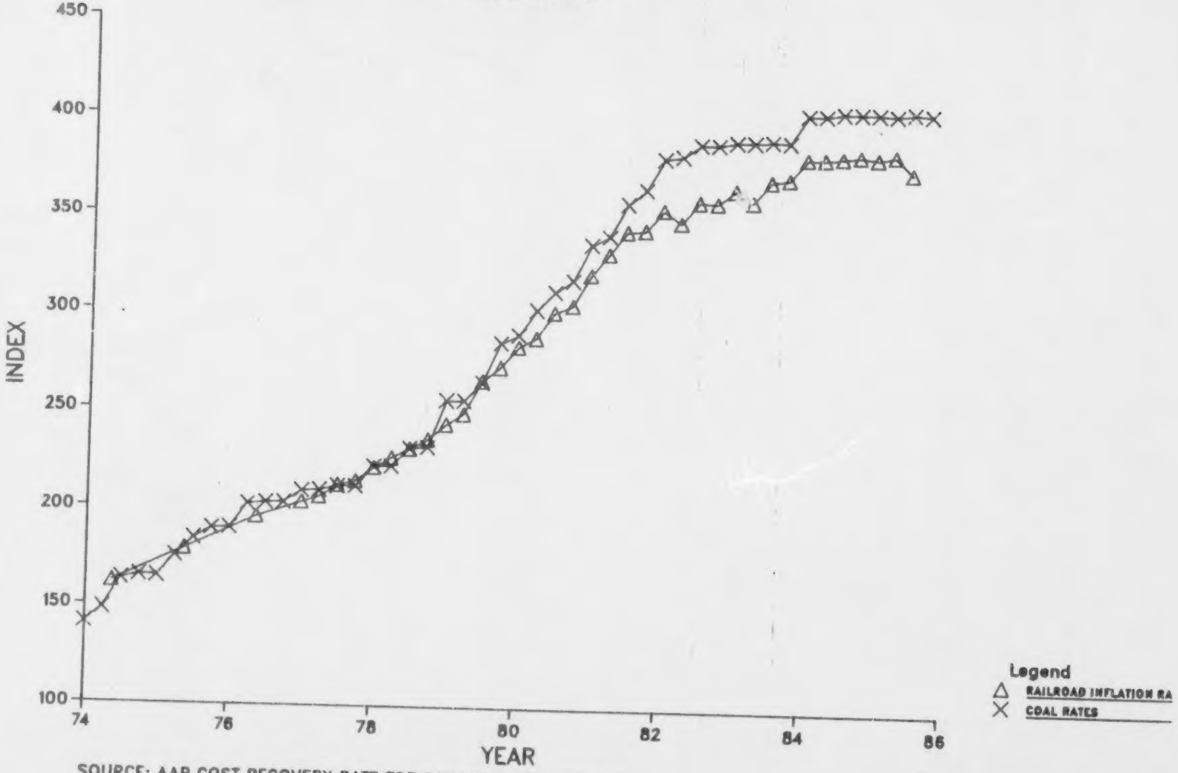
SOURCE: The Waybill Sample is a sample of all rail shipments terminated in the U.S. (Canada and Mexico origination omitted through 1983.)

COMPARISON OF COAL PRICES—RATES—PRODUCTION



1/ The Bureau of Labor Statistics' Rail Rate Index had 1969 as the base year until 1985. Beginning in 1985, BLS revised the sampling base for calculating the index to more accurately reflect the changing mix of rail traffic and the increased use of contracts for coal movements. In addition, they adopted December 1984 as the base year. Data in this table are based on 1969=100 in order to maintain comparability.

INDEXES OF ALL RAILROAD COAL RATES AND RAILROAD INFLATION RATES 1969=100



SOURCE: AAR COST RECOVERY RATE FOR RAILROAD INFLATION RATE
BLS FOR COAL RATES

RETURN ON NET INVESTMENT

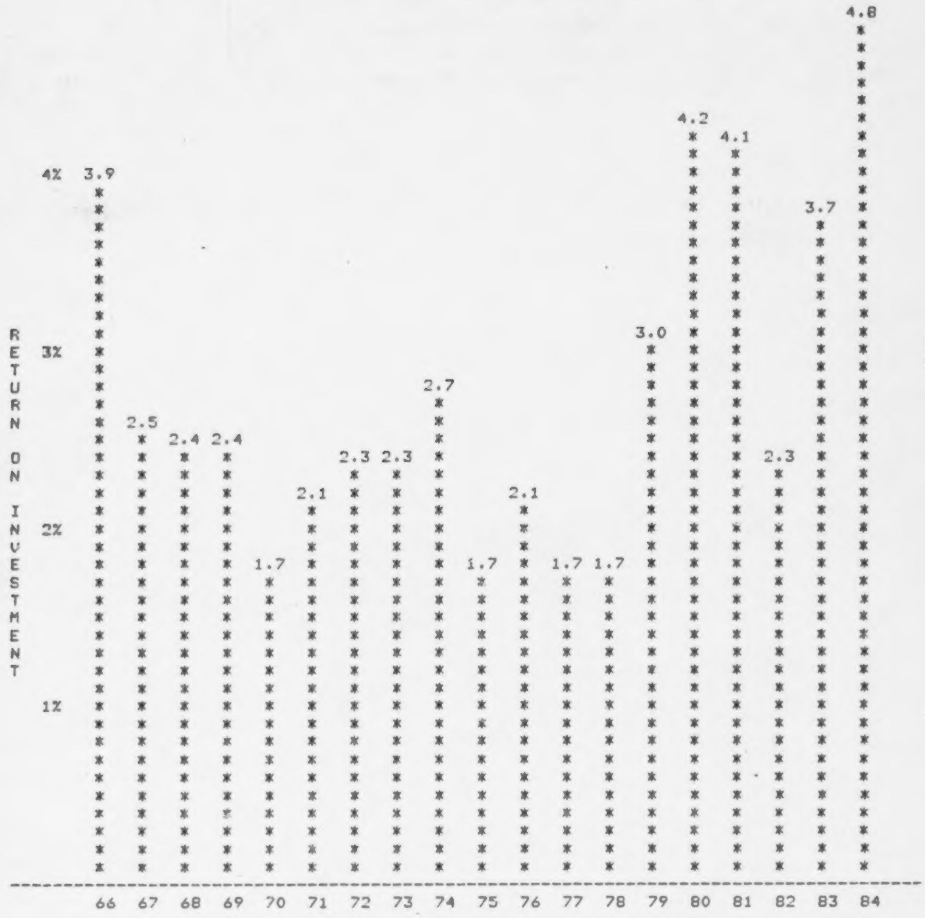
Mr. **Coughlin**. Please also update for the record the bar chart on page 777 of last year's hearing record depicting the composite return on net investment for Class I railroads.

[The information follows:]

The bar chart shows the composite return on net investment for Class I railroads for each of the years 1966 through 1984. The Commission's revenue adequacy standards, from 1978, first year of calculation, through 1984, are shown at the bottom of the graph.

COMPOSITE RETURN ON INVESTMENT
FOR CLASS -I RAILROADS
BETTERMENT ACCOUNTING BASIS
(1966 to 1984)

Prepared by The Bureau of Accounts - Interstate Commerce Commission



Revenue Adequacy Standards (Cost of Capital Rates):

1978	11.2%	1979	11.7%	1980	12.1%
1981	16.5%	1982	17.7%	~~1983~~	~~15.3%~~
1984	15.8%				

CLASS I REVENUE ADEQUACY

Mr. COUGHLIN. Please also update for the record the data on Class I revenue adequacy found on pages 779 and 780 of last year's hearing record.

[The information follows:]

The chart shows the revenue adequacy determinations for Class I railroads for each year from 1979 through 1983.

Class I Railroad Revenue Adequacy Determinations (1979 - 1983)
(Utilizing Return on Investment Equal to Cost of Capital)

	1979	1980	1981	1982	1983
EASTERN DISTRICT					
Baltimore & Ohio	4.5	3.8	2.4	0.4	0.2
Bessemer & Lake Erie	11.7 A	11.6	8.9	0.0	2.3
Boston & Maine	0.0	2.9	0.0	0.0	*
Chesapeake & Ohio	4.6	6.8	5.4	5.3	4.1
Conrail	0.0	0.0	0.0	0.0	3.7
Delaware & Hudson	0.0	0.0	0.0	0.0	0.0
Detroit Toledo & Ironton	5.1	0.0	0.0	0.0	0.0
Elgin Joliet & Eastern	13.3 A	3.6	3.9	2.7	3.7
Grand Trunk Western	2.5	0.0	3.0	0.0	0.0
Norfolk & Western	8.9	9.3	10.8	8.0	5.3
Pittsburgh & Lake Erie	10.1	17.8 A	1.2	0.0	0.0
Western Maryland	9.6	4.2	5.7	5.8	**
SOUTHERN DISTRICT					
Alabama Great Southern	***	6.6	8.7	4.3	4.8
Central of Georgia	***	10.0	9.7	6.2	8.1
Cinc., N.O. & Texas Pacific	***	10.7	10.3	7.6	9.7
Clinchfield	11.6	19.1 A	18.1 A	8.0	**
Florida East Coast	1.5	5.7	3.3	2.7	0.0
Illinois Central Gulf	0.0	0.0	0.0	0.0	0.0
Louisville & Nashville	5.1	5.5	7.0	4.9	**
Seaboard	7.2	7.0	2.1	1.4	4.2
Southern	9.1	7.8	7.7	4.4	4.0
WESTERN DISTRICT					
Atchison Topeka & Santa Fe	5.9	7.0	5.0	2.7	3.3
Burlington Northern	4.1	5.5	4.3	4.5	8.2
Chicago & Northwestern	0.0	3.6	2.2	0.0	4.7
Chi, Milwaukee St Paul & Pac	0.0	0.0	0.0	0.0	0.0
Colorado & Southern	0.0	7.7	4.8	**	**
Denver & Rio Grande Western	8.6	8.9	8.1	4.5	2.9
Duluth Mesabi & Iron Range	6.1	7.0	6.1	0.0	2.3
Fort Worth & Denver	22.8 A	19.3 A	21.9 A	**	**
Kansas City Southern	6.6	7.6	7.6	7.3	7.4
Missouri Kansas Texas	5.7	5.5	11.8	7.0	6.5
Missouri Pacific	8.4	8.1	8.0	6.0	4.9
St Louis San Francisco	5.8	**	**	**	**
St Louis Southwestern	7.5	5.8	3.9	4.2	3.3
Soo Line	8.2	9.2	8.1	3.0	2.9
Southern Pacific	1.6	2.6	0.5	0.0	0.0
Union Pacific	7.6	7.8	7.4	4.4	4.7
Western Pacific	4.4	3.2	0.0	0.0	0.0
COST OF CAPITAL STANDARD	11.7%	12.1%	16.5%	17.7%	15.3%

NOTES: All data on a Retirement-Replacement-Betterment Accounting Basis.

1981 and 1982 data for Conrail, Delaware & Hudson, Pittsburgh & Lake Erie, Chicago & Northwestern, and Western Pacific based on original costs before write-downs that occurred due to reorganizations. All other data from Annual Reports to the Commission and Supplements to those reports.

* The Boston & Maine changed from RRB to depreciation accounting during 1983. No accurate ROI cound be computed for this carrier for that year.

** These carriers no longer Class I due to mergers during years indicated.

*** Data for these carriers included with Southern for 1979.

CLASS I RAILROAD EARNINGS

Mr. COUGHLIN. Please also update for the record the data on Class I railroad earnings found on pages 849 through 858 of last year's hearing record.

[The information follows:]

The following are the Bureau of Accounts' latest publicly released earnings report of Class I railroads and the accompanying press release.

● interstate commerce commission
icc news
12th & constitution avenue nw □ washington dc 20423

FOR RELEASE:
January 9, 1986
No. 86-2

(202) 275-7252
BROWN

REVENUES, EARNINGS AND TRAFFIC VOLUME OF THE NATION'S LARGEST RAILROADS DECLINE DURING THE THIRD QUARTER OF 1985

The Nation's largest railroads reported declines in operating revenues, earnings, and traffic volume in the third quarter of 1985, compared to the same period of 1984, according to a report issued today by the Interstate Commerce Commission's Bureau of Accounts.

Today's report compares the earnings of the Class I line-haul railroads for the third quarter and twelve months ending September 30, 1985, with the corresponding periods of 1984. The data are based upon ratable depreciation accounting for track structures (DA), which the Commission prescribed beginning with financial data filed by railroads for the year 1983. DA replaced the retirement-replacement-betterment accounting method for track structures (RRB).

Returns on net investment (ratio of income from railroad operations to net investment in railroad property) have not varied significantly because earnings from railroad operations are relatively small in comparison to the much larger net investment base of the railroads.

A comparison of third quarter operations shows that:

... Operating revenues decreased 8.3 percent to $6.7 billion and revenue ton-miles of freight declined 8.7 percent.

... Coal traffic in the third quarter of 1985 was substantially less than the corresponding quarter of 1984 when coal was being stockpiled in anticipation of a coal industry strike on October 1, 1984, which did not occur.

... Net railway operating income fell 20.3 percent to $573.4 million.

... Net income before extraordinary items, which includes non-operating income and expenses, declined 15.6 percent to $646.2 million.

(MORE)

A comparison of operations for the 12-month periods reveals that:

... Operating revenues declined about 4.6 percent to nearly $27.8 billion and revenue ton-miles of freight decreased 4 percent.

... Net railway operating income fell 18.2 percent to almost $2.1 billion.

... Net income before extraordinary items declined 19.7 percent to $2.2 billion.

... Rate of return on net investment in transportation property declined to 4.65 percent from 5.96 percent.

This report is based primarily upon quarterly reports submitted to the Commission and these figures have not been verified by the ICC.

Copies of this report can be obtained from the Office of the Secretary, Publications Room B-221, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, D.C. 20423, telephone (202) 275-7833.

ICC

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS --
WASHINGTON, D. C. 20423

SHEET 1 OF 8

CLASS I FREIGHT RAILROADS SELECTED EARNINGS DATA
(000 OMITTED)

District, Railroad and Year		QUARTER ENDED SEPTEMBER 30					TWELVE MONTHS ENDED SEPTEMBER 30					
		Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Return Net Investme (Percer
Eastern District	1985	$1,842,809	$165,477	$ 233,617	$ 256,604	41,220,853	$ 7,350,463	$ 564,751	$ 767,330	$ 847,187	174,871,162	4.81
	1984	2,004,956	238,199	285,470	293,268	49,831,518	7,850,898	832,602	1,004,860	1,042,504	192,238,817	7.41
Southern District	1985	1,278,176	128,452	112,048	114,959	36,886,745	5,386,855	496,369	473,898	476,809	153,957,143	5.22
	1984	1,375,274	120,789	141,329	141,329	39,103,878	5,550,139	505,113	533,188	533,188	158,071,061	5.51
Western District	1985	3,622,440	279,510	300,492	304,026	134,289,531	15,014,668	1,010,752	954,668	972,856	543,952,130	4.34
	1984	3,974,213	360,214	338,571	338,575	143,595,743	15,678,930	1,196,190	1,197,257	1,168,351	559,246,742	5.41
Total All Class I Freight Railroads	1985	6,743,425	573,439	646,157	675,589	212,397,129	27,751,986	2,071,872	2,195,896	2,296,852	872,780,435	4.65
	1984	7,354,443	719,202	765,370	773,172	232,531,139	29,079,967	2,533,905	2,735,305	2,744,043	909,556,620	5.96
Individual Railroad Data **Eastern District**												
Baltimore & Ohio	1985	246,110	19,781	11,002	11,002	1,878,790	1,013,984	50,790	31,620	31,620	21,052,502	2.92
	1984	260,596	17,620	8,130	8,130	6,946,820	1,065,324	75,990	50,745	50,745	26,944,659	4.5

SHEET 2 OF 8

CLASS I FREIGHT RAILROADS SELECTED EARNINGS DATA
(000 OMITTED)

District, Railroad and Year Eastern District (Continued)		QUARTER ENDED SEPTEMBER 30					TWELVE MONTHS ENDED SEPTEMBER 30					
		Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Return on Net Investment (Percent)
Boston & Maine e/	1985	$ 28,638	$ 14	$ 451	$ 451	584,946	$ 117,416	$ 861	$ 2,375	$ 2,375	2,486,309	1.25
	1984	32,203	3,332	3,769	3,769	645,653	126,353	11,427	13,126	13,126	2,542,666	16.83
Chesapeake & Ohio	1985	259,633	33,075	44,465	44,465	8,100,454	975,126	80,036	114,612	114,612	30,494,114	4.90
	1984	294,867	37,128	59,154	59,154	8,791,427	1,089,713	102,868	171,209	171,209	33,474,582	6.82
Consolidated Rail Corporation	1985	770,128	88,721	98,099	120,258	17,881,169	3,165,807	279,812	347,471	419,272	73,732,829	5.64
	1984	827,711	121,740	133,037	140,835	19,211,046	3,332,985	448,024	490,493	528,137	76,344,824	9.49
Delaware & Hudson f/	1985	28,356	371	(32)	(32)	922,189	-	-	-	-	-	-
	1984	32,010	(404)	(706)	(706)	1,080,087	-	-	-	-	-	-
Elgin, Joliet & Eastern	1985	20,769	(84)	1,562	1,662	120,734	83,527	(912)	4,586	4,586	483,339	-0-
	1984	17,831	(412)	1,221	1,221	120,103	95,087	6,066	11,362	11,362	502,088	4.06
Grand Trunk Western g/	1985	80,851	866	(751)	77	1,192,937	345,151	7,422	2,712	10,768	5,014,672	2.23
	1984	81,043	(215)	(2,292)	(2,292)	1,387,677	381,902	2,464	(12,625)	(12,625)	6,589,767	.63
Norfolk & Western	1985	408,324	22,733	78,721	78,721	10,539,644	1,649,452	146,742	263,954	263,954	41,607,397	5.25
	1984	458,695	59,410	83,157	83,157	11,648,705	1,759,534	185,763	280,550	280,550	45,841,231	7.00

CLASS I FREIGHT RAILROADS SELECTED EARNINGS DATA

(000 OMITTED)

SHEET 3 OF 8

District, Railroad and Year		QUARTER ENDED SEPTEMBER 30					TWELVE MONTHS ENDED SEPTEMBER 30					
		Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Return Net Investe (Perce
Southern District												
Florida East Coast	1985	$ 26,823	$ 820	$ 4,400	$ 4,400	762,088	$ 119,031	$ 9,763	$ 22,576	$ 22,576	3,176,181	3.6
	1984	26,482	1,452	5,679	5,679	759,755	118,408	(8,514)	29,227	29,227	3,084,662	-0
Illinois Central Gulf	1985	207,165	3,561	1,049	3,960	5,740,000	902,237	40,536	17,208	20,119	26,254,208	2.3
	1984	229,382	9,350	29,179	29,179	6,188,466	943,882	45,743	58,336	58,336	26,361,865	2.6
Seaboard System	1985	627,768	63,107	49,483	49,483	18,728,360	2,635,320	215,800	216,706	216,706	77,059,075	5.3
	1984	675,258	62,454	54,438	54,438	20,082,834	2,735,180	266,868	247,923	247,923	80,106,052	7.1
Southern Railway	1985	416,420	60,964	57,116	57,116	11,656,297	1,730,267	230,270	217,408	217,408	47,467,679	6.6
	1984	444,152	47,533	52,033	52,033	12,072,823	1,752,669	201,016	197,702	197,702	48,518,482	5.9
Western District												
Atchison, Topeka & Santa Fe	1985	533,623	35,442	34,782	34,782	17,170,791	2,183,188	122,189	120,975	120,975	70,150,312	3.4
	1984	592,472	46,907	42,439	42,439	20,203,959	2,292,778	148,930	142,150	142,150	74,483,651	4.5

CLASS I FREIGHT RAILROADS SELECTED EARNINGS DATA
(000 OMITTED)

SHEET 4 OF 8

District, Railroad and Year Western District (Continued)		QUARTER ENDED SEPTEMBER 30					TWELVE MONTHS ENDED SEPTEMBER 30					
		Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Return Net Investm (Perce
Burlington Northern	1985	$1,002,337	$126,110	$ 144,631	$ 144,631	45,435,600	$4,169,746	$ 491,618	$ 506,654	$ 506,654	189,256,087	8.2
	1984	1,110,330	156,796	145,308	145,308	51,440,702	4,371,181	522,356	541,206	541,206	194,703,569	9.4
Chicago & North Western	1985	205,285	12,394	2,108	5,642	6,149,747	818,016	27,364	(18,182)	(14,648)	23,851,850	2.6
	1984	221,081	22,558	17,675	17,675	6,008,793	895,990	62,653	41,481	41,481	25,392,906	6.0
Denver & Rio Grande Western	1985	78,516	6,640	5,841	5,841	2,891,804	333,261	24,353	22,907	22,907	11,755,226	4.1
	1984	91,623	7,645	7,331	7,331	3,344,348	353,397	21,267	18,070	18,070	13,062,976	4.0
Kansas City Southern	1985	79,857	9,012	7,305	7,305	2,898,154	324,508	34,526	27,149	27,149	11,964,024	7.4
	1984	84,745	9,422	8,077	8,077	3,050,574	322,062	35,485	23,129	23,129	11,739,916	7.5
Missouri-Kansas-Texas	1985	68,350	4,102	1,240	1,240	2,445,304	268,458	10,088	(1,824)	(1,824)	8,582,134	3.0
	1984	71,686	4,847	3,196	3,196	2,240,728	292,698	19,326	6,994	6,994	9,013,629	6.4
Missouri Pacific	1985	400,009	34,955	12,907	12,907	12,983,351	1,693,486	110,103	65,397	65,397	52,018,966	3.6
	1984	462,477	50,671	44,555	44,555	13,050,978	1,771,745	161,457	128,377	128,377	52,606,099	5.8
St. Louis Southwestern	1985	95,451	7,073	7,011	7,011	3,253,197	399,740	17,608	29,680	29,680	13,930,370	2.2
	1984	107,094	2,660	7,187	7,187	3,864,972	427,536	16,038	36,940	36,940	15,102,474	2.1

SHEET 5 OF 8

CLASS I FREIGHT RAILROADS SELECTED EARNINGS DATA
(000 OMITTED)

District, Railroad and Year Western District (Continued)		QUARTER ENDED SEPTEMBER 30					TWELVE MONTHS ENDED SEPTEMBER 30					
		Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Railway Operating Revenues	Net Railway Operating Income a/	Income Before Extra-ordinary Items b/	Net Income c/	Revenue Ton-Miles of Freight	Return on Net Investment d/ (Percent)
Soo Line h/	1985	$ 158,266	$ 5,172	$ (3,687)	$ (3,687)	4,522,577	$ 521,114	$ 20,147	$ (2,592)$	(2,592)	15,546,598	4.33
	1984	82,259	4,176	7,473	7,473	2,612,684	316,017	13,943	19,190	19,190	9,975,420	3.04
Chicago, Milwaukee, St. Paul and Pacific h/	1985	-	-	-	-	-	142,231	(13,268)	(61,380)	(46,726)	2,783,767	-0-
	1984	108,054	4,067	4,820	4,824	3,110,080	422,674	10,822	39,804	10,898	12,483,399	1.70
Southern Pacific Transportation Co.	1985	512,672	11,855	50,360	50,360	15,991,901	2,108,267	24,909	109,530	109,530	64,913,636	.78
	1984	542,692	12,223	23,035	23,035	17,445,325	2,152,488	47,633	91,126	91,126	68,895,133	1.58
Union Pacific	1985	447,165	25,967	39,754	39,754	18,952,105	1,905,889	146,018	165,475	165,475	73,292,903	4.58
	1984	462,106	38,267	31,604	31,604	15,953,600	1,912,198	138,783	120,688	120,688	66,433,421	4.36
Western Pacific	1985	40,909	788	(1,760)	(1,760)	1,595,000	146,764	(4,903)	(9,121)	(9,121)	5,906,257	-0-
	1984	37,594	(25)	(4,129)	(4,129)	1,269,000	148,166	(2,503)	(11,898)	(11,898)	5,354,149	-0-

NOTES: 1) Data shown above are based on ratable depreciation accounting for track structures (DA). By ICC order served February 17, 1983, Docket No. 36988, Alternative Methods o Accounting for Railroad Track Structures, 367 ICC 157, railroads were required to file financial data with the ICC on the basis of DA, beginning with their 1983 annual reports and 1984 quarterly reports. DA replaced the retirement-replacement-betterment accounting method for track structures (RRB).

2) This report does not include the National Railroad Passenger Corporation (Amtrak) since it is not a freight hauling railroad and is not subject to the ICC Uniform Syste of Accounts.

3) This report includes all Class I freight hauling railroads. The data for three Class I railroad subsidiaries of the Southern Railway Company (Alabama Great Southern Railroad Company, Central of Georgia Railroad Company and Cincinnati, New Orleans and Texas Pacific Railway Company) are included above in the data shown for Southern Railway. The quarterly data filed by the Southern Railway includes, on a consolidated basis, the data of these three subsidiaries.

a/ Net Railway Operating Income - Difference between operating revenues and the total of railway operating expenses, railway tax accruals and net equipment and joint facility

b/ Income Before Extraordinary Items - Net income after including fixed charges, non-operating income, unusual or infrequent items and earnings attributable to discontinued se
but before extraordinary items and cumulative effect of changes in accounting principles.

c/ Net Income - Net income after extraordinary items and cumulative effect of changes in accounting principles.

d/ Return on Net Investment - Ratio of net railway operating income to net investment in railway property used in transportation services at end of previous calendar year. Th
includes an allowance for working capital based upon the Commission's Rail Form A formula. If net investment data as of the end of each quarter were available, returns o
investment would be computed by using an average of the net investment at the beginning and at the end of the respective twelve month periods. However, net investment da
generally only available as of the end of the calendar year; a substantial portion of this data is derived from annual reports (Form R-1) of Class I line-haul railroads w
required to be filed with the Commission by March 31 of the following year. Thus, the net investment data used for this report which represent the latest available end of
calendar year data are not averaged in order to assure that net railway operating income is more closely equated, timewise, with the railroad assets generating this incom
symbol -0- for return on net investment indicates a deficit net railway operating income. The Commission, by decision in Ex Parte No. 452, Railroad Cost of Capital - 198
served October 31, 1984, found that the railroad industry's current cost of capital, or fair return rate, for comparison with returns on net investment, was 15.3 percent
1983.

/ Boston and Maine's large return on net investment for the twelve months ended September 30, 1984, is attributable to a substantial write-down of the railroad's net investment in railway property on June 30, 1983. The purchase price for the common stock of Boston and Maine was considerably less than the railroad's net equity, necessitating a large write-down of railroad assets.

/ Data submitted by the Delaware and Hudson Railway Company for 1983 were based on the RRB accounting method for track structures. Consequently, no twelve month period data are shown above because earnings subsequent to 1983 were submitted on a DA basis and are thus not comparable with 1983. Delaware and Hudson was granted a waiver of the Commissic requirement for adoption of DA for the period, January 1 to December 31, 1993, since the railroad, effective January 4, 1984, was acquired by Guilford Transportation Industri Inc. Revenue, revenue ton-miles and earnings on a DA basis for the twelve months ending September 30, 1985 and September 30, 1984, were as follows:

(000 omitted)

	Twelve Months Ended	
	September 30, 1985	September 30, 1984
Railway Operating Revenues	$ 111,292	$ 121,553
Net Railway Operating Income	(5,425)	-*
Net Income Before Extraordinary Items	(6,197)	-*
Net Income	(6,197)	-*
Revenue Ton-Miles of Freight	3,776,532	4,016,641
Return on Net Investment (Percent)	-0-	-*

*Data on a DA basis not available.

g/ Effective December 31, 1983, the Detroit, Toledo & Ironton Railroad Company, a Class I railroad, merged into the Grand Trunk Western Railroad Company. Data shown above for Grand Trunk Western for periods prior to January 1, 1984 represent the combined data of Grand Trunk Western and Detroit, Toledo and Ironton.

h/ The Soo Line Railroad Company acquired the railroad operations of the Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee) on February 19, 1985. Data shown above for Soo Line for the quarter and twelve months ended September 30, 1985 reflect operations over the lines of the Milwaukee subsequent to February 19, 1985. Data shown above for the Milwaukee for the twelve months ending September 30, 1985 reflect operations from October 1, 1984 to February 19, 1985.

RAILROAD AND MOTOR CARRIER INCOME TAXES

Mr. Coughlin. Please also update for the record the data on railroads and motor carrier income taxes found on pages 860 through 862 of last year's hearing record.

[The information follows:]

The charts identify those Class I railroads and those large motor carriers of property (among the 100 largest) which did not pay any Federal income taxes in 1984.

LARGE MOTOR CARRIERS NOT PAYING FEDERAL INCOME TAXES IN 1984
(000 Omitted)

	Provision for Deferred Taxes	Federal Income Taxes Paid	Ordinary Income (Loss) After Taxes	Total Revenues
Associated Truck Lines, Inc.	366	(10,741)	(12,583)	193,988
Coastal Tank Lines	(264)	(145)	(7,028)	55,136
Jones Motor Co., Inc.	-0-	-0-	2,025	76,622
M & G Convoy, Inc.	2,071	(1,244)	1,971	90,572
Matlack, Inc.	1,337	(2,416)	2,362	209,065
Midwest Emery Freight System, Inc.	-0-	-0-	(159)	45,842
Oneida Motor Freight, Inc.	41	-0-	(616)	59,565
Smiths Transfer Corporation	(725)	(1,988)	(4,646)	335,133
Alterman Transport Lines, Inc.	54	(38)	749	47,998
McLean Trucking Company	(296)	(10,078)	(9,654)	487,615
Old Dominion Freight Lines, Inc.	(1,886)	(1,434)	(1,658)	127,354
Ryder/P-I-E Nationwide, Inc.	(7,267)	(16,157)	(19,670)	890,747
Southwest Motor Freight	-0-	(430)	518	59,250
The Motor Convoy, Inc.	-0-	-0-	2,376	92,977
Thurston Motor Lines, Inc.	-0-	(1,049)	(1,200)	111,475
ABF Freight System, Inc.	9,589	(8,761)	7,920	386,203
Advance Transportation Co.	-0-	-0-	(1,280)	66,881
Auto Convoy, Inc.	-0-	-0-	2,103	77,748
Campbell 66 Express	(1,597)	(483)	(1,280)	88,554
CRST, Inc.	1,419	(383)	2,863	88,503
FFE Transportation Service	116	(195)	143	63,066
Garrett Freight Lines, Inc.	623	(4,558)	(6,437)	173,858
Graves Truck Lines	185	(2,279)	(2,145)	71,369
Mistletoe Express Service	-0-	(101)	(486)	75,034
MIC of America, Inc.	-0-	(178)	(151)	83,101
Schwerman Trucking Company	200	-0-	625	55,449
SysteH a9	-0-	-0-	(2,891)	72,193
Cassons Transport Company	-0-	-0-	574	71,148
Yellow Freight System	24,595	(819)	38,825	1,344.334
Southeastern Freight Lines	-0-	-0-	9,638	70,049
C W Transport	(255)	(108)	1,128	131,475
Murphy Motor Freight Lines, Inc.	(562)	-0-	(1,071)	96,731

See footnote on next page.

Source: 1984 Annual Reports Form M filed by these carriers.

Note: Amounts in brackets under income tax columns represent negative income tax expense. Negative or zero income tax paid can result from one or more of the following: net loss from operations, accelerated depreciation for tax purposes, and tax loss carryforwards. Negative income tax expense can represent refunds due from Internal Revenue Service or amounts due from affiliated companies in connection with tax allocation agreements pertaining to the filing of consolidated income tax returns.

CLASS I RAILROADS NOT PAYING FEDERAL INCOME TAXES FOR 1984
(000 Omitted)

Railroad	Net Income (Loss) After Tax	Income Tax Deferred	Federal Income Tax Paid
Eastern District			
Baltimore & Ohio	43,656	15,297	(5,128)
Boston & Maine	7,856	-0-	-0-
Chesapeake & Ohio	142,346	65,002	(4,374)
Consolidated Rail Corporation	500,173	-0-	-0-
Delaware & Hudson	(6,537)	-0-	-0-
Grand Trunk Western	7,324	-0-	(3,256)
Pittsburgh & Lake Erie[1]/	(11,598)	(300)	-0-
Southern District			
Illinois Central Gulf	62,353	9,096	-0-
Seaboard System	246,315	130,019	(2,440)
Western District			
Atchison Topeka & Santa Fe	135,029	72,514	(25)
Chicago & North Western	20,899	3,500	-0-
Chicago Milwaukee St. Paul & Pacific[2]/	(40,853)	-0-	-0-
Denver & Rio Grande Western	23,150	16,437	(7,726)
Missouri Pacific	129,910	70,991	(32,178)
Missouri Kansas Texas	7,856	-0-	(800)
Soo Line	18,002	12,883	2,287)
Southern Pacific	137,200	(33,300)	(17,438)
Western Pacific	(6,820)	9,340	(25,715)

[1]/ Effective January 1, 1985, Pittsburgh and Lake Erie was reclassified as a Class II railroad.

[2]/ Railroad operations were acquired of the Soo Line on February 19, 1985.

See footnote on next page.

Source: ICC Transport Statistics in the United States for the term ended December 31, 1984.

Note: Amounts in brackets under income tax columns represent negative income tax expense. Negative or zero income tax paid can result from one or more of the following: net loss from operations, accelerated depreciation for tax purposes, tax benefits applicable to railroads from the Economic Recovery Tax Act of 1981, and tax loss carryforwards. Negative income tax expense can represent refunds due from Internal Revenue Service or amounts due from affiliated companies in connection with tax allocation agreements pertaining to the filing of consolidated income tax returns.

MARKET DOMINANCE GUIDELINES

Mr. COUGHLIN. I believe the Commission has also recently revised its market dominance guidelines, shifting to the railroads the burden of proving product and geographic competition.

Would you briefly describe the dissatisfaction that existed with the Commission's old market dominance guidelines, why the Commission changed those guidelines, and how well they are being accepted by shippers and the railroads?

Mrs. GRADISON. Well, many shippers complained that the old burden of proof alignment placed too great a burden on them, and as product and geographic competition issues are complex ones, and because the railroads agreed to assume this burden of proof, we, as a Commission, agreed to change the approach.

We have not yet decided a case under the new guidelines, so it is hard to say how the shippers are accepting them, but this was a shipper-sponsored agreement, so we expect that they will be pleased with it.

Mr. COUGHLIN. Please expand on your answer for the record.

[The information follows:]

The prior rules, in use since 1981, established guidelines for how we would analyze four kinds of competition in determining whether market dominance exists. The four are: (1) intramodal (competition from another railroad serving the same origin and destination); (2) intermodal (competition from another mode serving the same origin and destination); (3) product (competition from an economically-substitutable commodity that can move by another railroad or another mode); and (4) geographic (competition for the same commodity from another source that can move via another railroad or mode). The guidelines required that overall competition must be an effective restraint on the railroad's pricing. Thus, for example, a motor rate for the same commodity that is 100% greater than the rail rate would not, standing alone, prove effective competition.

Under the statute, complainants have the burden of proving market dominance overall. As to the latter two types of competition, if a railroad defendant argued either or both existed, our rules required the complainant to prove they were not effective restraints on rail market power.

Shippers were concerned primarily with the product and geographic factors and the burden of proof associated with them. Granted, they do raise complex questions of market analysis. However, they do have a direct bearing on railroad pricing decisions.

At the request of the Association of American Railroads, the Commission recently adopted a number of changes to its approach that were negotiated by the AAR, the National Industrial Transportation League, and other shipper groups. These new guidelines affect the product and geographic competition analysis by: (1) putting the burden of proving effective geographic and product competition in all cases on the railroads; (2) finding that geographic or product competition for a receiver would not, standing alone, prove this competition for the producer and vice versa; and (3) further elaborating the relevant criteria for proving product and geographic competition. A copy of the Commission's decision is provided for the record.

Shipper response is difficult to gauge because the Commission has yet to decide a case under the new guidelines. However, as they were the product of extensive shipper-carrier negotiations, we expect them to be well received.

SERVICE DATE
OCT 31 1985

EC

INTERSTATE COMMERCE COMMISSION

Ex Parte No. 320 (Sub-No. 3)

PRODUCT AND GEOGRAPHIC COMPETITION

Decided: October 24, 1985

New evidentiary guidelines adopted for product and geographic competition in market dominance determinations.

DECISION

BY THE COMMISSION:

On March 1, 1985, the Association of American Railroads (AAR) filed a petition[1] requesting the Commission to institute a proceeding to supplement the product and geographic competition guidelines[2] used in market dominance determinations. The current guidelines were established in Ex Parte No. 320 (Sub-No. 2), *Market Dominance Determinations*, 365 I.C.C. 118 (1981) (*Market Dominance*), *aff'd sub nom.*, *Western Coal Traffic League v. I.C.C.*, 719 F.2d 772 (5th Cir. 1983) (*en banc*), *cert. denied*, 104 S. Ct. 2160 (1984). In its petition, AAR requested the modifications in the form of proposed rules.[3] The American Paper Institute (API) and the National Industrial Transportation League (NITL) filed statements supporting the AAR proposal. By decision served April 1, 1985, the Commission instituted a proceeding to consider amending the evidentiary guidelines for market dominance determinations with respect to product and geographic competition.

Fifty-one parties filed written comments,[4] and twenty parties[5] submitted written reply statements. On July 18, 1985, after consideration of the comments, the Commission held an oral argument where representatives of certain parties were permitted further to explain or supplement their written statements. The Chemical Manufacturers Association (CMA) and AAR submitted supplemental written comments after the hearing. At an open voting conference held on July 31, 1985, the Commission decided to adopt AAR's proposal with certain modifications.[6]

---

[1] The petition was filed in Ex Parte No. 456, *The Staggers Rail Act of 1980- Conference of Interested Parties*. However, since the subject concerned market dominance, it was given a sub-number in the Ex Parte No. 320 series.

[2] *See* Appendix A for the current guidelines.

[3] *See* Appendix B for the AAR proposal.

[4] See footnotes 11, 12, and 13, *infra*.

[5] Ad Hoc Committee on Soda Ash Transportation, American Bakers Association, API, AAR, Clarke and Foldes, Consumer Owned Power Coalition, Department of Transportation, Eastern Coal Transportation Conference, E.I. Du Pont de Nemours and Company, Eli Lilly & Co., Fertilizer Institute, FMC Corporation, Institute of Scrap Iron & Steel, Inc., NITL, North Dakota Public Service Commission, North Dakota State Wheat Commission, Public Utility Commission of Oregon, Rubber Manufacturers Association, Inc., Society of Plastics, and Western Coal Traffic League.

BACKGROUND

A jurisdictional prerequisite to our consideration of the maximum reasonableness of rail rates is a finding that the carrier has market dominance over the transportation to which the rate applies. 49 U.S.C. 10709.

Before 1976, all rail rates were subject to regulation by the Interstate Commerce Commission under the statutory "just and reasonable" standard.[7] Through enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act),[8] Congress sought to restore financial stability to the railroad industry, in part, through reducing regulatory restraints on railroad pricing decisions. A key element of the 4R Act was a limitation on the Commission's jurisdiction over the maximum reasonable level of rail rates to situations where the railroads have "market dominance." This term is statutorily defined in section 10709(a) as "an absence of effective competition from other carriers or modes of transportation for the traffic or movement to which a rate applies."

To implement this jurisdictional limitation, Congress directed the Commission to establish, by rule, standards and procedures for making market dominance determinations. Congress specified that the rules were to be designed to provide "a practical determination without administrative delay" (90 Stat. 31, 35 (1976) and ensured that result by requiring the Commission to make a jurisdictional market dominance determination within 90 days after the beginning of proceedings challenging the level of a rate.

The Commission initially adopted regulations in Ex Parte No. 320, Special Procedures for Making Findings of Market Dominance, 353 I.C.C. 875, modified, 355 I.C.C. 12 (1976). These initial regulations set out three presumptions, any of which, if established and unrebutted, would give the Commission jurisdiction to review the reasonableness of a challenged rail rate. Evidence of any of the following triggered a presumption of market dominance:

(1) the railroad(s) involved in the movement handled 70 percent or more of the traffic within the prior year (the "market share" presumption);

(2) the rate yielded revenues exceeding 160 percent of the variable cost of service (the "cost" presumption) and;

(3) the shipper had made a substantial investment in rail related plant or equipment, thus precluding the use of alternative transportation (the "rail investment" presumption). 353 I.C.C. at 887-917.

With several exceptions, the presumptions were rebuttable through the introduction of any relevant evidence. 353 I.C.C. at 866; 355 I.C.C. at 15.

---

[6] See Appendix C for the guidelines as adopted by this decision.

[7] 49 U.S.C. 10701a(b), former Section 1(5) of the Interstate Commerce Act.

[8] Pub. L. No. 94-210, 90 Stat. 31, February 5, 1976.

The exceptions related to the market share presumption. In adopting that presumption, the Commission rejected arguments by the railroads, the United States Department of Justice, and others that the definition of the relevant market should not be confined to direct carrier competition for the specific movement, but should be defined more broadly to include product competition, geographic competition, and other potential forms of competition. 353 I.C.C. at 900. The Commission initially refused, in making its "effective competition" determination, to consider the shipper's or receiver's option to use commodities that are interchangeable with the commodity covered by the challenged rail rate (product competition) or the availability of the same product from alternative destinations or sources (geographic competition).

In rejecting consideration of these factors, the Commission expressed concern that the statutory definition of market dominance precluded their consideration and that evidence relating to them would involve complex antitrust litigation that could not be completed within the 90-day statutory time limit. 355 I.C.C. at 904-08.

However, the Commission pointed out that as it gained experience implementing the concept of market dominance, refinements and modifications might be required. The Commission added that it would hold the proceeding open to permit the reevaluation of the various standards and procedures, based on actual experience. 355 I.C.C. at 20.

With the exception of a limited remand for purposes of clarifying the cost presumption, the Commission's regulations were upheld on judicial review. Atchison, T. & S.F. Ry. v. ICC, 580 F.2d 623 (D.C. Cir. 1978). However, although the court deferred to the Commission's view on product and geographic competition, it indicated that the Commission could reevaluate its rules in light of later experience. In response to the court's limited remand on the cost presumption, the Commission issued a clarification opinion, Special Procedures for Findings of Market Dominance, 359 I.C.C. 735 (1979). In that decision, the Commission stated that it was conducting a further analysis that would examine how to treat evidence of geographic competition, and that carriers could introduce evidence of geographic and product competition, among other forms, to establish that effective competition exists. See id at 736.

After several years of experience with the presumptions, and after studying the question further,[9] the Commission proposed removing the presumptions (except for the cost test) in Ex Parte No. 320 (Sub-No. 1), Rail Market Dominance and Related Consideration, 49 Fed. Reg. 3535 (January 17, 1980). In lieu of the presumptions, the Commission proposed that parties present any relevant evidence, specifically including evidence of geographic or market competition. While the Commission was considering comments in that proceeding, however, Congress enacted new legislation that required modification of that proposal.

Section 202 of the Staggers Rail Act of 1980 (Staggers Act)[10] directed the Commission to make a finding of no market dominance if the carrier shows that the challenged rate would yield a revenue-to-variable cost percentage less than a given percentage. 49 U.S.C. 10709(d)(2). Contrary to the Commission's then-existing cost presumption, the amended statute further provided that a finding that a rate is equal to or greater than the statutory variable cost percentage "does not establish a presumption" of market dominance. Subsequently, in Market Dominance, supra, the Commission eliminated the market dominance presumptions[11] and replaced them with broader, more flexible guidelines designed to focus market dominance evidence on the competitive alternatives, if any, available to a shipper, and on the feasibility of using each.

In the Market Dominance decision, the Commission articulated four major forms of competition that affect rail transportation: (1) intramodal competition; (2) intermodal competition; (3) geographic competition; and (4) product competition. 365 I.C.C. at 131. In each of those four categories, the Commission outlined various considerations that it considered relevant in determining the existence of competition. Id. at 132-34. The Commission stated that other forms of competition may also be important in individual circumstances and that the Commission was prepared to consider such evidence on a case-by-case basis. Id. at 131.[12]

---

[9] In a report to Congress (ICC, The Impact of the 4R Act Railroad Ratemaking Provisions, October 5, 1977), the Commission analyzed, among other things, the impact of its market dominance regulations. That report concluded that approximately 50 percent of rail traffic would be market dominant under the Commission's presumptions, absent rebuttal evidence. Report at 51. Subsequently, the Commission staff directed a research project by a consultant to analyze the market dominance concept in operation. In a report issued in 1979, the consultants concluded, inter alia that (1) because of the complexity of rail markets, general procedural rules must permit exceptions in individual circumstances; (2) very little rail traffic (under 5 percent long term, 10-15 percent short term) is market dominant if all transportation alternatives are considered; and (3) rebuttable presumption tests tend to be inaccurate. Kearny, A Study to Perform an In-Depth Analysis of Market Dominance and its Relationship to Other Provisions of the 4R Act, IX-4-6 (1979).

[10] Pub. L. No. 96-448, 94 Stat. 1895 (1980).

[11] The Commission concluded that the presumptions did not necessarily reflect the degree of railroad market power, and therefore, yielded inaccurate market dominance determinations. 365 I.C.C. at 120-21. The quantitative measures (i.e., the market share, cost, and rail investment presumptions) were found to be poor indicators of market dominance in the widely varying fact situations to which they were designed to apply. See id. at 123.

In order to clarify the procedures for introducing evidence of market dominance, the Commission first noted that it was the railroads' statutory obligation to present revenue/variable cost evidence if it sought to demonstrate that the rate was below the statutory jursidictional threshold. The Commission also made it the railroads' obligation to introduce evidence of product or geographic competition, by identifying where they believe such competition exists. Once this identification has been made, the shipper has the burden of proving that the burden of proving that the product or geographic competition is not effective.

Thus, after five years experience with the more restrictive approach, the Commission found merit in the Federal Trade Commission's original criticism that use of the presumptions would obscure other considerations of relevance to market dominance determinations. See Atchison, T. & S.F. Ry. v. I.C.C., 580 F.2d 623, 630-31 (D.C. Cir. 1978). Similarly, the Commission's decision to at least consider evidence of geographic and product competition reflected the position of the Department of Justice that those forms of competition can and, in some circumstances, have had an effect on competition and should be considered. See id. at 633.

The Commission has applied these factors in numerous cases, and both the standards and their application (including the use of geographic and product competition) have been upheld by the courts. See Market Dominance, supra. See also Salt River Project Agricultural Improvement & Power District v. United States, 762 F.2d 1053 (D.C. Cir. 1985) ("Salt River"); Aluminum Ass'n v. Akron, C. & Y. R. Co., 367 I.C.C. 475 (1983), aff'd, Aluminum Co. of America v. I.C.C., 761 F.2d 746 (D.C. Cir. 1985) ("Aluminum").

In Ex Parte No. 456, The Staggers Rail Act of 1980 - Conference of Interested Parties, the Commission institute a proceeding to gather and analyze information relating to the implementation of the Staggers Act and to provide a forum for the discussion of problem areas by those directly affected. It was not a formal legal proceeding, but was intended to give affected parties an opportunity to deal directly with each other under the auspices of, but without direction from, the Commission. The purpose, in part, was to obtain mutually agreeable proposals for implementing the Staggers Act. Subconferences were established on various topics. One of these related to market dominance. Although no broad consensus was reached in the meetings, the proposal being considered here was an outgrowth of the Ex Parte No. 456 proceeding.

The proposal was intended as a compromise between railroad and shipper interests that would supplement, but not radically change, the Commission's established market dominance guidelines. The proposal would: (1) place the burden of proving the existence of effective geographic or product competition on the railroads in all cases; (2) establish that the showing of geographic or product competition with respect to a receiver would not, standing alone, establish the existence of such competition with respect to a producer, and vice versa; (3) consolidate the current product competition guidelines; and (4)(a) make certain changes in the wording of current geographic guidelines 3 and 6, (b) consolidate current geographic guidelines 4, 5, and 8, (c) delete current geographic guideline 9, and (d) revise current geographic guideline 10 to encompass only long-term contracts made before October 1, 1980.

---

[12] Because of its prior position on the admissibility and relevance of geographic and product competition, the Commission discussed at length its decisionto include such evidence. See 365 I.C.C. at 127-31.

Of the fifty-one parties that filed initial comments concerning the proposal, twelve parties supported it outright,13/; and thirteen parties supported the proposal, but also argued for certain modifications.14/ Twenty-six parties (including 10 electric power companies who filed a joint statement) opposed the proposal.15/ However, they did not object to the particular proposed changes, and some conceded that the changes may be of at least minimal benefit. (These parties opposed the proposal because they are opposed to the product and geographic competition standards in general.) Thus, there is substantial support for this proposal (especially for the burden of proof guideline and the producer/receiver distinction), and no opposition to the basic changes it would institute.

We note that the opponents of the proposal are attempting to relitigate the issue of product and geographic competition. They discuss possible alternatives, and some request that we reject the proposal and renotice the proceeding as one to consider the exclusion of product and geographic competition from the market dominance guidelines. We think that elimination of the basic product and geographic competition guidelines is unwarranted. As stated previously, these standards have been applied and challenged, and have stood the test of the courts. In addition, they are economically valid an are the basic antitrust tenet in determining market power.

After considering the parties' written statements and oral arguments, we decided to adopt the proposal, with some minor modifications. Each particular section of the proposal, along with the parties' arguments and our conclusions are discussed in detail below.

13/ Association of American Railroads, American Paper Institute, American Petroleum Institute, Board of Trade of Kansas City, MO, Department of Defense, Department of Transportation, E.I. DuPont de Nemours & Co., FMC Corporation, National Industrial Transportation League, Pillsbury Company, and the Tennessee Valley Authority.

14/ Cargill, Inc., Chemical Manufacturers Association, Clarke and Foldes, Farmland Industries, Inc., Fertilizer Institute, Institute of Scrap Iron and Steel, Inc., McCarty Farms (McCarty), National Council of Farmer Cooperatives, Penzoil Sulphur Co., Phillips Petroleum Company, the State of Montana, the Society of Plastics, and U.S. Department of Agriculture.

15/ American Bakers Association (American Baker), Amstar Corporation, Atlantic City Electric Company, Baltimore Gas & Electric Company (BG&E), Cleveland Electric Illuminating Company, Commonwealth Edison Company, Consumer-Owned Power Coalition (Consumers Power Coalition), Consumers Power Company (Consumers Power), Dayton Power and Light Co., Eastern Coal Transportation Conference (ECTC), Edison Electric Institute (EEI), Electric Fuels Corporation (EFC), General Electric Company (G.E.), Grain Transportation Consultants of the Pacific North-West, Growmark, Inc. (Growmark), Madison Gas & Electric Company, Monongahela Power Company, New York State Electric and Gas Corp., Oregon Public Service Commission, Pennsylvania Power & Light Company, Rubber Manufacturers Association, Inc., Toledo Edison Company, Union Electric Company, Western Coal Traffic League (WCTL), Wisconsin Electric Power Company, and The Western Power and Light Company.

DISCUSSION

The AAR proposal is divided into four parts, which are further divided into subparts. We will discuss them in the order in which they are stated in the proposal.

PART 1 - GEOGRAPHIC COMPETITION

Part (1) sets out certain items to be considered in determining whether geographic competition provides effective competition for a particular rail service. It specifically states that the Commission must consider, but is not limited to consideration of these items. Thus, other additional evidence may be submitted by parties.

Item (1)(a). Item (1)(a) restates the Commission's current geographic competition guideline (1). It states that the Commission shall consider:

> the number of alternative geographic sources of supply or alternative destinations available to the producer or receiver for the product in question.[16]

CMA has suggested that we add the following to this language:

> and their market shares relative to the market share of the product transported by the railroad under the challenged rate.[17]

CMA argues that the market share of alternative sources of supply is a significant factor.

Adoption of CMA's proposal would constitute a return to the market share analysis the Commission used prior to the Staggers Act. However, in Market Dominance, supra, where the Commission adopted post-Staggers Act guidelines, the Commission eliminated its earlier market share presumption and deemphasized the relevance of market share as a consideration. The Commission cited problems in defining the scope of the market, since the factors that determine the appropriate scope vary widely in individual situations. 365 I.C.C. at 123. The Commission also pointed out that even an accurate calculation of a carrier's share of a particular market reflects only the transportation alternatives selected in the past, as opposed to alternative sources currently available. Furthermore, the Commission has recently held, in relation to product competition, that a small change in market share may be sufficient to constrain rail pricing. Aluminum, supra, at 485. Our reasons for not including a market share analysis among the factors that must be considered remain valid and we will not adopt CMA's suggested amendment to Item (1)(a).[18] We will adopt Item (1)(a) of the proposal, without CMA's modification.

---

[16] The proposal restates the current guideline verbatim, except that the word "producer" is substituted for the word "shipper." This substitution will have no substantive effect on market dominance proceedings before the Commission. We will make one further change, however, and substitute the word "originator" for the word "producer." See discussion in Part 3, infra.

[17] CMA also proposes the deletion of the references to producers and alternative destinations in proposals (1)(a), (1)(b), and (1)(d), arguing that the Commission should not consider alternative destinations for producers at all. For discussion of this suggestion, see the discussion of Part 3, infra.

Item (1)(b). Item (1)(b) restates the Commission's current geographic competition guideline (2) verbatim. It states that the Commission shall consider:

> the number of these alternative sources or destinations served by different carriers.

CMA has suggested that the word "unaffiliated" be inserted before the word "carriers." It maintains that affiliated carriers should be treated as a single entity and cites former 49 C.F.R. 1109.1(g)(1) in support. However, we note that in Salt River, supra (slip op. at 19), the court rejected the argument that an affiliate automatically is not a competitor. Such a determination depends on whether the affiliation affects rates, traffic volumes, or other components of the market. In many instances, affiliates may still compete for traffic. The degree of autonomy of affiliated carriers should be considered on a case-by-case basis. CMA's proposal could limit the Commission's ability to look at actual competition in a market. We will adopt Item (1)(b), which restates our current guidelines, without modification.

Item (1)(c). Item (1)(c) corresponds to the present geographic guideline (3). The present guideline states that evidence should be presented "that the product available from each source or required by each destination is the same." [Emphasis added.] The proposal would change this guideline to consider the "suitability" of the product available from each source or required by each such destination.

Clarke and Poldes, and Phillips Petroleum Company (Phillips) have expressed concern that the substitution of "suitability" for "sameness" would broaden the categories of products to be considered in determining the existence of effective competition and, therefore, provide less protection for captive shippers than is provided by the present language. CMA adds its view that considering the issue of suitability in the geographic competition test would confuse the issues of product and geographic competition. It states that the current guidelines recognize that, for purposes of clarity, the two concepts should be defined separately.

Product competition, within the meaning of the Commission's current guidelines, exists when a receiver or originator can substitute other products moving over different lines for the product covered by the rail rate at issue. The Commission already looks at substitutable products as well as the same products to determine the existence of product competition. Aluminum, supra. Where the Commission looks at substitutable products, it must be sure that the products considered from each source or to each destination are suitable substitutes. See present product competition guidelines (1)-(3).

---

[18] CMA filed a petition to reopen the proceeding, and AAR replied. In its petition, CMA argues that its proposed modification was misconstrued at the voting conference as a proposed substitute for the current language when it was actually meant to supplement the current language. It maintains that its proposed modification might have been viewed differently if it had been construed correctly. Our conclusion concerning the relevance of the market share analysis applied equally whether viewed as a substitute or an addition to the current language. As acknowledged by CMA, the guidelines prescribe only the factors that must be considered. The general language in Item (1) would still permit evidence of market share to be submitted at a party's discretion.

Thus, in the present interpretation and application of the guidelines, the Commission already has expanded the reference to "same" products to include consideration of suitable substitute products. The proposed language would not broaden the categories of products to be considered. Rather, it would more accurately reflect our present policy, thus clarifying rather than confusing matters.

Item (1)(d). Item (1)(d) combines present geographic guidelines (4), (5), and (8) into a single criterion. The proposal substitutes reference to "the operational and economic feasibility and relative cost of transportation services from alternative sources or to alternative destinations" for references to the distance [guideline (4)], relevant physical characteristics [guideline (5)], and transportation costs [guideline (8)] associated with each alternative.

The parties commenting on this change seem to agree that the proposal, if intended to be the same as the guidelines it combines, is not unacceptable. But, they express concern that it may denote a deletion of the specific factors (distance, physical characteristics, and transportation costs). They express the preference that the current language be retained to avoid any inference that a change providing for a broader comparison of dissimilar transportation was intended.

We find that the phrasing of the proposal will lend greater flexibility to our considerations. This summary of the current guidelines, however, is in no way intended to prevent the consideration of the specific factors enumerated in the present guidelines. Indeed, it would be helpful to refer to these factors as examples of matters that may be addressed. Therefore, we will adopt the proposal with the added language:

> including, but not limited to, the consideration of: distance of sources or destinations, physical characteristics of the routes, and transportation costs of each alternative.

Item (1)(e). Item (1)(e) rephrases present geographic guideline (6). It makes no substantive change in the existing guideline, would not result in any change in its interpretation, but would slightly shorten the language used. The revision is acceptable and we will adopt it.

Item (1)(f). Item (1)(f) is identical to current geographic guideline (7). Both refer to evidence of the "capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question." The proposal makes no language changes. However, the Fertilizer Institute and Phillips suggest that the term "capacity" is too ambiguous or theoretical. The Fertilizer Institute suggests that we substitute the term "extent" for "capacity", since, allegedly, it is more easily definable. CMA suggests that we consider whether alternative sources would be "able and willing" to supply additional quantities in the amounts needed, rather than their capacity to provide the product.[19]

Our present policy is to consider potential as well as actual competition in determining whether effective competition exists. Salt River, supra. The reference to the "capacity" of a source to supply a product or of a destination to absorb a product permits the consideration of potential as well as actual sources and destinations. On the other hand, language that would limit us to examining only "the extent" to which a source does supply a product or to which a destination absorbs a product would tend to exclude the consideration of potential sources and destinations.

The present language (also that of the proposal) more clearly reflects the Commission's present policy and will be retained without modification. Furthermore, the present language is broad enough to include consideration of the items that concern CMA (likelihood that alternative sources would supply the product, ability to make long-term commitments, and other business considerations), and as discussed in Part 4, infra, the railroad has the burden of presenting such evidence and showing it to be relevant to the issue of whether potential sources or destinations exist.

Item (1)(g). Item (1)(g) corresponds to present geographic guideline (10). However, while the present guideline permits the Commission to consider evidence of substantial rail-related investment or long-term supply contracts (with more weight given to contracts made prior to October 1, 1980), the proposal would permit evidence only of long-term contracts made before October 1, 1980.

Some parties object to the change in language concerning long-term supply contracts. Clarke and Foldes point out that this proposed language is more restrictive than the current language and that the conditions that led the Commission to permit some (if limited) consideration of post-1980 contracts still exist.

CMA suggests that, since the proposal was meant to supplement rather than replace the existing guidelines, there should be no objection to retention of the current language. (CMA also requests retention of the language concerning rail-related investment.)

Toledo Edison and Dayton Power suggest that the proposal's language, read literally, does not specifically preclude consideration of rail-related investment or post-Staggers Act long-term supply contracts, since Part 1's preamble states that the Commission shall consider, but not be limited to, the evidence enumerated in the proposal. On the other hand, they note the Commission's apparent interpretation of the proposal as eliminating all consideration of post-Staggers Act contracts. They argue that such an interpretation would be a radical departure from the present rules and urge the Commission to clarify the matter by stating that it does not intend completely to preclude consideration of post-Staggers Act supply contracts.

---

[19] CMA's petition to reopen stated that its request had been mischaracterized at the voting conference. Although CMA was mistakenly cited as the author of the Fertilizer Institute's view, we had also considered CMA's position on Item (1)(f). See discussion infra.

In Market Dominance, supra, the Commission eliminated its presumptions concerning substantial investments, and long-term supply contracts. The Commission stated that originally the presumption was designed to protect shippers who make themselves captive to a particular carrier by making substantial rail-related investments. 365 I.C.C. at 124. This presumption was eliminated because the Commission found that the amount of rail-related investment is, by itself, a poor index of captivity. Moreover, the Staggers Act, effective October 1, 1980, substantially changed the relationship between shippers and the railroads. The Staggers Act gave shippers the ability to contract with carriers. Therefore, the shipper could protect itself by negotiating with various carriers before making substantial investments that would tie it to a particular carrier. 365 I.C.C. at 125.

The Commission was concerned that shippers would rely on the presumption rather than take advantage of the new contracting opportunities under the Staggers Act by negotiating with various potential competing carriers or supply sources for the transportation. Therefore, the Commission announced that it would not allow shippers to create market dominance by tying themselves to a single carrier through substantial rail-related investments or long-term supply contracts after October 1980. That is, shippers would not be permitted to ensure the Commission's continuing jurisdiction over their rail transportation on the basis of that consideration alone.

The Commission recognized that the submission of evidence concerning such investments or contracts made after October 1, 1980, should be permitted. However, because the ability to obtain transportation contracts gave shippers greater flexibility and opportunity for protection, we determined that evidence of substantial investments or long-term supply contracts entered into subsequently should be given less weight than those entered into when shippers and railroads faced greater contracting restrictions.[20] Circumstances have not changed since the Commission first made this determination. The Commission still intends to permit consideration, albeit with less weight, of post-Staggers Act rail-related investments and supply contracts. The present language more clearly reflects this intent than does the proposal. The language of current geographic guideline (10) will be retained.

Present geographic competition guideline (9). The proposal would delete geographic competition guideline (9), evidence of "collective ratemaking among the railroads in question as evidenced by rate bureaus". Amstar and CMA concede that collective ratemaking has diminished, but state that it has not ended. They argue that because rate bureaus do not set as many rates as they did in the past is no reason for not considering that factor in any cases where rate bureaus have been involved. They maintain that if the shipper or receiver can establish that rates have been made through collective ratemaking activity, it should be permitted to do so, and therefore, that guideline (9) should be retained.

---

[20] The cut-off date used was the effective date of the Staggers Act, because the new statute clearly recognized the validity of transportation contracts and thus removed any lingering uncertainty as to the protection such contracts would afford shippers and as to the method of enforcement.

We agree that if a shipper or receiver can establish that rates have been made through collective ratemaking activity, it should be permitted to submit such evidence. However, collective ratemaking no longer is used for single-line rates or competing joint-line rates and rate bureau activity has been greatly curtailed. Thus, the cases where such evidence would be relevant are extremely limited. Under these circumstances, we think that the language of item (1)'s preamble, stating that the Commission's considerations will not be limited to the listed factors, is sufficient to permit the submission of rate-bureau evidence where relevant.[21] Specific language need not be added to the proposal.

PART 2 - PRODUCT COMPETITION

Part 2 combines the four current guidelines for product competition into two broader guidelines. Both the present and proposed guidelines refer to substitute products, but while the present ones refer specifically to use, price, efficiency, and transportation costs of the substitute product, the proposed guidelines refer generally to the "substitutability and availability of substitute products," and to the "relative costs of using the substitute products."

Clark and Foldes object to the reference to "substitutability" in place of "use of a substitute product," arguing that this could promote consideration of non-comparable products. In their view, if products were truly comparable, they would actually be used; that is, actual use should be the indicator of substitutability.

CMA would have the Commission consider the costs of obtaining, as well as of using substitute products. It argues that varying transportation costs affect the feasibility of product substitution.

Finally, Atlantic Electric fears that the proposed guideline (2)(b) could be interpreted to exclude data concerning prices and "explicit and implicit" transportation costs of substitutable products, or could limit the inquiry to a comparison of delivered prices of the product and its substitute.

We find that the phrasing of the proposal will lend greater flexibility to our considerations, and that it is an acceptable summary of our present product competition guidelines. Clark and Foldes' objection is without merit, since, under the Commission's present policy, we consider potential as well as actual competition. Aluminum, supra; Salt River, supra. Furthermore, as previously stated in our discussion of item (1)(c), supra, the Commission already looks at substitutable products and the determination of whether a substitute is comparable (that is, whether a product is a suitable substitute) is already a part of that analysis. This is consistent with the approach taken in defining the relevant product market under the antitrust laws, where the reasonable interchangeability of products for the purposes for which they are produced (with price, use, and qualities considered) is the standard. See United States v. E. I. duPont de Nemours & Co., 351 U.S. 377 (1956).

---

[21] But see intramodal competition guideline 10 that does consider collective ratemaking. It is appropriate to enumerate this factor in the intramodal competition guideline, because collective ratemaking directly affects intramodal competition.

We do note that the summary in Part 2 is not intended to prevent consideration of the specific factors enumerated in our present guidelines. As with Item (1)(d), supra, we think it would be helpful to the parties to state these factors in the guidelines as examples of matters that may be addressed. Therefore, we will add to the proposal the following language:

> (c) The prices, efficiency, and explicit and implicit transportation costs of the substitute products relative to the product in question.

PART 3 - RECEIVER/PRODUCER COMPETITION

Part 3 is an entirely new section. It states that a railroad facing geographic or product competition with respect to a receiver would not, standing alone, establish the existence of effective product or geographic competition as to a producer, and vice-versa. This Part also states that if a railroad wants to establish that a receiver's alternatives effectively restrain railroads in relation to producers (or vice-versa), the railroad has the burden of proof on the issue.

All parties seem to support the basic idea behind this guideline. However, two modifications have been proposed. First, some parties think that the term "producer" ought to be clarified. NITL suggests it embrace "consignors." The Fertilizer Institute suggests the term "originator" be substituted for "producer," because this would clearly include whoever ships the goods--producer, consignor, or shipper. AAR has stated that it would find this change acceptable. We agree that the substitution of the term "originator" for the term "producer" would clarify the guidelines, and this substitution will be made wherever the term appears in the guidelines.[22]

Second, CMA maintains that it is inappropriate to consider, at all, whether alternative destinations are available to an originator of traffic. It argues that, though the availability to the receiver at a destination of numerous sources of the product may tend to limit the total delivered price of that product at that destination, it does not provide any assurance that a carrier with monopoly power over the origin-to-destination movement would not charge a rate unfairly appropriating available economic rents from the originating shipper. It cites Coal Exporters Ass'n v. United States, 745 F.2d 76 (D.C. Cir. 1984), cert. denied, 53 U.S.L.W. 3772 (1985), and Railroad Exemption - Export Coal, 367 I.C.C. 570 (1983), for this view. CMA maintains that, for destination competition to have any beneficial effect for an originator of traffic, additional competitive factors would have to be shown.

CMA also argues that the theory of alternative destinations does not give an originating shipper bargaining leverage with a railroad, since there are rarely alternative destinations that are not already being supplied, and since shippers will not automatically abandon a customer cultivated over a long period of time. Therefore, CMA proposes that language referring to the producer be deleted from the proposed guideline.[23]

---

[22] For consistency, the substitution will be made in Item 1 as well as in Item 3.

We agree with AAR's argument that geographic competition that arises from the availability of different destinations is not conceptually different from that which arises from the presence of alternative origins. Although CMA argues that evidence of competition from alternative destinations does not assure that a carrier will not abuse its market power concerning division of rents, CMA does not suggest that the availability of alternative destinations never effectively constrains rail rates. In fact, its arguments are a tacit admission that such competition could have some beneficial effect if other competitive factors are present. Part 3 specifically states that such evidence, standing alone, would not establish effective competition. Other factors would have to be considered as well. Under these circumstances, and since the railroads have the burden of proof on this issue, we do not think the railroads should be precluded from introducing such evidence.

PART 4 - BURDEN OF PROOF

Presently, if a railroad seeks a finding of a lack of market dominance based on the existence of product and geographic competition, the railroad has the burden to identify where it believes product or geographic competition exist. The burden then shifts to the shipper to prove that this product or geographic competition is not effective. Part 4, the most important part of the parties' compromise in the guidelines, would place both the burden to identify such competition and to prove that it is effective on the rail carrier in all cases. No parties oppose this proposal, and most actively support it.[24]

We agree that this proposed change should be adopted. Presently, the shipper has the ultimate burden of proof on all four forms of competition (intermodal, intramodal, product and geographic). It is much more difficult for shippers to prove that competition is not effective with regard to product and geographic factors than with regard to intramodal and intermodal factors. It should also be noted that, under our existing guidelines, the railroad has the option of whether to introduce product and geographic competition as an issue in a proceeding. Market Dominance, supra, at 132. It can forgo this option altogether and choose only to rebut the shipper's presentation on intramodal and intermodal competition. Since the railroad may thus control, to some extent, the scope of a proceeding as it relates to product and geographic competition, it is equitable to place the burden of proof for these two factors on the railroad.

In addition, this new allocation of burdens of proof should reduce discovery disputes and expedite the market dominance phase of maximum rate reasonableness proceedings.

Phillips, the Fertilizer Institute, and Farmland Industries suggest that the railroads' burden of proof should be extended to intramodal and intermodal competition as well as product and geographic competition. However, apart from the allegation that the railroads are the only entities capable of fully developing the relevant information, these parties do not discuss the issue.

---

[23] It is for these same reasons that CMA proposed to delete references to producers and destinations from Items (1)(a), (1)(b), and (1)(c).

[24] Some do maintain that it does not go far enough and that more radical changes are needed. See discussion of "other matters," infra.

This proposal is beyond the limited scope of this proceeding. See Section 553 of the Administrative Procedure Act. The notice was limited to the guidelines agreed upon by the parties and presented to the Commission, and to whether the Commission would adopt those guidelines. Neither the agreement, nor the notice, addressed intermodal or intramodal competition. Furthermore, as an initial burden on the shipper, the burden to show its use or potential use of intramodal or intermodal competition does not appear to be overly burdensome. The Commission has the authority to reexamine this allocation in the future, if necessary, after it has had some experience with the changes it is instituting now concerning product and geographic competition.

Other Matters

(1) The Herfindahl-Hirshman Index.

CMA requested that we begin a proceeding to consider adopting a modified version of the Herfindahl-Hirshman Index (HHI). The HHI determines market concentration by computing the sum of the squares of the market shares of participants in a particular market. CMA proposes the use of a separate intramodal/intermodal competition index and product/geographic competition index. The modal index would reflect market shares of carriers transporting a product between origin and destination. The product/geographic index would reflect market-shares of all carriers bringing products to the destination from all sources. A rebuttable presumption of market dominance would arise when a weighted combination of the two indices exceeds a figure set by the Commission as a threshold. The presumption then could be rebutted by submission of evidence concerning intramodal, intermodal, product, and geographic competition. CMA maintains that the Department of Justice (DOJ) has used the HHI in evaluating the potential anticompetitive effect of mergers.25/

The HHI, particularly in the form proposed by CMA, presents several problems. Although the HHI uses market shares it does not define the relevant market. Adopting CMA's suggestion that we determine a threshold HHI figure triggering a market dominance presumption would basically require a return to the pre-Staggers market share presumption we rejected in Market Dominance, supra.26/ This would again raise the problem of setting a threshold that could be justified on terms that would not be found arbitrary and capricious by the courts. The CMA proposal does not suggest a way to deal with this problem, nor does it address the weight to be given the proposed indices or the manner in which parties could develop a record within the 90-day time frame the Commission has to make market dominance determinations.

25/ DOJ has filed a letter stating that CMA's proposal is a productive step in developing a framework for competitive analysis of rail markets, but that further comment and analysis is necessary. It requests that if we consider the matter, it be done in a separate proceeding.

26/ The Commission eliminated the market share presumption because of problems in defining the scope of the market. The basic problem, the Commission pointed out, was that the factors that determine the appropriate scope vary widely in individual situations. 365 I.C.C. at 123. Moreover, even an accurate calculation of a carrier's share of a particular market reflects only the transportation alternatives selected in the past, as opposed to alternative sources currently available. Although the Commission thus eliminated the quantitative market share test (i.e., 70 percent of the traffic within the past year) as a presumption, it nevertheless stated that evidence of current market shares and market share trends may be submitted in addition to or in conjunction with evidence suggested in the guidelines. See id.

Furthermore, since the HHI figure would create a rebuttable presumption, and evidence of the four present forms of competition would still be admissable in rebuttal, the HHI would merely add an additional layer of required evidence, and thus could substantially lengthen the time it takes to resolve the issue of market dominance, and increase the expenses involved in the determination.

While DOJ has used the HHI, it has used it as only an internally set threshold -- a starting point to determine whether to begin an investigation. There are numerous caveats DOJ must consider even after concentration levels exceed its index before it institutes an action. In addition, as the Department of Transportation (DOT) has pointed out, the HHI has not been applied by DOJ in railroad cases.

Finally, we think that before considering making a further, substantial change in our rules -- such as the HHI -- we ought to give the changes adopted so far in this proceeding a chance to work. Consequently, we will not institute a proceeding to adopt the HHI as a rule at this time. However, the parties will be free to monitor the operation of these changes and raise the issue again some time in the future, if appropriate. The preamble language to the agreement we are adopting would, of course, permit the submission of HHI evidence where relevant, even though it is not set out as an officially adopted standard.

(2) Product and geographic competition generally.

A number of parties urge the Commission not to consider product and geographic competition in market dominance decisions. They point out that market dominance is a jurisdictional finding that the Commission is required to make in 90 days. They argue that the use of product and geographic competition turns a market dominance proceeding into an antitrust-type trial and that the Commission lacks expertise in antitrust matters.

Amstar, American Baker, ECTC, EEI, EFC, Consumers Power, and WCTL argue that the present guidelines cause the process of determining market dominance to be too complex, costly, and time-consuming, and that they result in substantial procedural delay. Amstar and Consumers Power recite the statement in Arizona Public Service Co. v. United States 742 F.2d 644 (D.C. Cir. 1984), that market dominance determinations are very susceptible to findings based on speculation. These parties request that we reject the proposal and renotice the proceeding to reconsider product and geographic competition entirely.

ECTC, WCTL, Consumers Power Coalition, American Baker, and G.E. support the adoption of language contained in the Consumers United for Rail Equity Act, Senate Bill S. 477 and numerous others (BG&E, Rubber Manufacturers, Consumers Power, Growmark, McCarty and Montana) support similar language.[27]

---

[27] S.477 would establish the following limitations: (1) the Commission could only consider competition for the movement of the same commodity between the same two points, and (2) if the complainant shows that alternative non-circuitous rail service is not available, a presumption of market dominance would arise and the rail carrier would have the burden to rebut it by showing effective competition.

The requests of parties to eliminate these guidelines are beyond the scope of the notice given to the public in this proceeding. It was clear from the notice that the intent of the proceeding was to fine-tune these standards, not to reconsider their propriety. To permit an open-ended new discussion of these now well-established standards would go beyond the scope of the noticed proceeding and violate section 553 of the Administrative Procedure Act. Furthermore, the Commission previously discussed at length its decision to accept evidence of product and geographic competition in Market Dominance, supra, at 127-31, and that decision has been upheld.

Finally, CMA and the Scrap Iron and Steel Institute seek modification of the proposal to state that evidence of product and geographic competition, standing alone, will not establish the existence of effective competition. These parties did not submit argument in support of this request.

We note that in Aluminum, supra, the court found effective competition, based solely on product competition. Thus, the courts have recognized this as a valid measure of competition.

CONCLUSION

The market dominance determination guidelines, including the change made by the AAR-NITL-API agreement, with our modifications, are restated in Appendix C.

An agency generally is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice, or there is statutory direction or legislative history to the contrary. See Ziffrin, Inc. v. United States, 318 U.S. 73,78 (1942); Bradley v. Richmond School Board, 416 U.S. 696, 711 (1974). The rule applies to agency regulations as well as statutes, Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268, 282 (1969), even where the agency that has changed the regulations is the one applying them.

We will apply the new guidelines to all cases pending when the rules become effective. Since the carrier already bears the burden of coming forward with the evidence on the issues of product and geographic competition, the change will only affect its ultimate burden of persuasion and the application should not unfairly burden the carrier. In addition, upon request of the litigants, we will reopen the records of pending cases to permit additional evidence in keeping with these guidelines. However, where a shipper has met its current heavier burden of proving market dominance, we will not reopen these cases solely to perform a new burden of proof analysis. Instead, we will allow these decisions to stand. See Art Pape Transfer Inc., Ext. - Commod., in End-Dump Vehicles, 132 M.C.C. 84, 92-95 (1980) (when the burden of proof has been met and that burden is then reduced by law or rule, the new, lesser burden of proof has also been met).

This decision will not significantly affect the quality of the human environment or energy conservation.

Ex Parte No. 320 (Sub-No. 3)

It is ordered:

1. The guidelines, as set forth in Appendix C, are adopted.

2. Notice will be published in the Federal Register on November 6, 1985.

3. The decision is effective on December 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne
Secretary

(SEAL)

SERVICE DATE
NOV 2 2 1985

Interstate Commerce Commission

Ex Parte No. 320 (Sub-No. 3)

PRODUCT AND GEOGRAPHIC COMPETITION

November 15, 1985

NOTICE TO THE PARTIES:

A decision of the Commission, decided October 24, 1985, was served in this proceeding on October 31, 1985. Inadvertently Appendices A and B of the decision were omitted from the served decision. Copies of these appendices are attached to this notice. Also, the appendix attached to the decision should have been designated Appendix C. Please make the necessary changes to the decision.

By the Commission.

(SEAL)

JAMES H. BAYNE
Secretary

Appendix A - Present Evidentiary Guidelines for Geographic and Product Competition.

3. Geographic competition-Geographic competition was described and defined above. Geographic competition among rail carriers is nontrivial for commodities in which transportation costs account for a substantial portion of the delivered price. To establish the potential for geographic competition, evidence should be submitted concerning the following:

(1) the number of alternative geographical sources of supply or alternative destinations available to the shipper or receiver for the product in question;
(2) the number of these alternative sources or destinations served by different carriers; and
(3) that the product available from each source or required by each destination is the same.

Such evidence is sufficient only to indicate whether effective geographic competition is possible. To determine whether effective geographic competition actually exists, evidence showing the feasibility of each source or destination and the likelihood of competition should be presented. This evidence may be as follows:

(4) the distance associated with each alternative source or destination;
(5) relevant physical characteristics of the route associated with each alternative;
(6) the access of the shipper or receiver to each transportation alternative;
(7) the capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question;
(8) the transportation costs associated with each alternative;
(9) collective ratemaking among the railroads in question as evidenced by rate bureaus; and
(10) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

We again emphasize that these guidelines are not intended to encompass all pertinent evidence.

4. Product competition-Product competition was also described and defined earlier. Evidence as to its existence should reflect the availability to the shipper or receiver of feasible substitutes and show that these substitutes can be obtained through the use of other carriers or modes without substantially greater cost, transportation or otherwise. To demonstrate whether a feasible substitute exists, the following types of evidence, among others, may be submitted:

(1) use of a substitute product(s) by the receiver or shipper in question or by others with similar needs and under similar conditions;
(2) the prices of the substitute product(s) relative to the product in question;
(3) the efficiency of the substitute product(s) relative to the product in question; and
(4) the explicit and implicit transportation costs of the substitute product(s) and the product in question.

Ex Parter No. 320 (Sub-No. 3)

Appendix B - THE AAR-NITL-API AGREEMENT

RAILROAD MARKET DOMINANCE STANDARDS AND ISSUES OF GEOGRAPHIC OR PRODUCT COMPETITION

(1) In determining whether geographic competition provides effective competition for a particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) the number of alternative geographical sources of supply or alternative destinations available to the producer or receiver for the product in question;

(b) the number of these alternative sources or destinations served by different carriers;

(c) the suitability of the product available from each such source or required by each such destination;

(d) the operational and economic feasibility and relative costs of transportation services from alternative sources or to alternative destinations;

(e) the accessibility of each such transportation alternative;

(f) the capacity of each source to supply the product in question or the capacity of each such destination to absorb the product in question; and

(g) evidence of long-term supply contracts made before October 1, 1980.

(2) In determining whether product competition provides effective competition for particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) the substitutability and availability of the substitute products; and

(b) the relative costs of using the substitute products.

(3) The fact that a railroad faces geographic or product competition with respect to a receiver would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis a producer; and the fact that a railroad faces geographic or product competition vis-a-vis a producer would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis a receiver. In any individual rate case, a railroad seeking to establish that receiver alternatives effectively restrain railroads vis-a-vis producers, or that producer alternatives effectively restrain railroads vis-a-vis receivers, would bear the burden of proof as to that issue.

(4) The burden of proving the existence of effective geographic or product competition shall in all cases be borne by the railroads.

APPENDIX C

THE MARKET DOMINANCE GUIDELINES AS MODIFIED IN THIS PROCEEDING

Sections (1)-(6) below indicate the type of evidence we consider important and establish certain burdens of proof. Protestants/complainants should also use these guidelines for preparation of rebuttal evidence.

1. Intramodal competition-Intramodal competition refers to competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, it can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:

(1) the number of rail alternatives;
(2) the feasibility of each alternative as evidenced by:
(a) physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (*e.g.*, circuity, track conditions, et cetera); and
(b) the direct access of both the shipper and the receiver to each of the rail alternatives as evidenced by individual rail sidings, neutral terminal companies, or reciprocal switching; or, if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;
(3) the transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);
(4) collective ratemaking among the railroads in question as evidenced by rate bureau involvement; and
(5) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate.

2. Intermodal competition.-Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor and water carriage are the main sources of intermodal competition for railroads.

a. Water carriage.-Water carriage is restricted to certain geographic areas and is generally used for commodities moving in bulk. The evidence required to demonstrate effective competition between rail and water alternatives is in many respects similar to that required for intramodal competition among rail carriers. Parties in a rate case should provide evidence along the following lines:

(1) the number of alternatives involving different carriers;
(2) the feasibility of each alternative as evidenced by:
(a) pertinent physical characteristics, for the product in question, of the transportation or routing associated with each alternative;
(b) the access of both the shipper and receiver to each alternative; and
(c) the transportation costs of each alternative.

Again, these factors are not exhaustive.

b. *Motor carriage*.-Unlike rail or water alternatives, the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted. Therefore, the feasibility of using motor carriage as an alternative to rail may be viewed as depending exclusively on the nature of the product and the needs of the shipper or receiver. Effective competition from motor carriage may be deduced from the following types of evidence:

(1) the amount of the product in question that is transported by motor carrier where rail alternatives are available;
(2) the amount of the product that is transported by motor carrier under transportation circumstances (*e.g.*, shipment size and distance) similar to rail;
(3) the amount of the product that is transported using motor carrier by shippers with similar needs (distributional, inventory, et cetera) as the shipper protesting the rate;
(4) physical characteristics of the product in question that may preclude transportation by motor carrier; and
(5) the transportation costs of the rail and motor carrier alternatives.

Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered.

3. *Geographic Competition.*-In determining whether geographic competition provides effective competition for a particular rail service, the Commisison shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) the number of alternative geographical sources of supply or alternative destinations available to the originator or receiver for the product in question;

(b) the number of these alternative sources or destinations served by different carriers;

(c) the suitability of the product available for each such source or required by each such destination;

(d) the operational and economic feasibility and relative costs of transportation services from alternative sources or to alternative destinations, including, but not limited to, the consideration of: distance of sources or destinations, physical characteristics of the routes, and transportation costs of each alternative.

(e) the accessibility of each transportation alternative;

(f) the capacity of each source to supply the product in question or the capacity of each such destination to absorb the product in question; and

(g) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

4. *Product Competition.*-In determining whether product competition provides effective competition for particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) the substitutability and availability of the substitute products;

(b) the relative costs of using the substitute products; and

(c) the prices, efficiency, and explicit and implicit transportation costs of the substitute product(s) relative to the product in question.

(5) The fact that a railroad faces geographic or product competition with respect to a receiver would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis an originator, and the fact that a railroad faces geographic or product competition vis-a-vis an originator would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis a receiver. In any individual rate case, a railroad seeking to establish that receiver alternatives effectively restrain railroads vis-a-vis originators, or that originator alternatives effectively restrain railroads vis-a-vis receivers, would bear the burden of proof as to that issue.

(6) The burden of proving the existence of effective geographic or product competition shall in all cases be borne by the railroads.

LONG/CANNON AMENDMENT

Mr. **Coughlin**. Please also update for the record the information found on page 785 of last year's hearing record regarding the status of the Commission's guidelines for implementing the Long/Cannon Amendment.

[The information follows:]

Long-Cannon evidence may be filed in any rate reasonableness case. While, as discussed in last year's hearing record, we decided not to establish rigid rules to govern the filing of this evidence, it plays a key role in the Constrained Market Pricing approach we adopted in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines-Nationwide. It is one of the four constraints to rail monopoly pricing set forth there and guarantees that, to the extent railroads price inefficiently or do not fairly apportion revenue shortfall, a captive shipper will not be made to absorb these inefficiencies through its rate. The Long-Cannon criteria are also implicit in the stand-alone cost test, as this test would set the rail rate as the most efficient minimum rail plant needed to serve the shipper.

BOXCAR DEREGULATION

Mr. **Coughlin**. Another longstanding issue has been the Commission's various actions to deregulate its boxcar hire and car service rules.

Would you update us on the status of the Commission's proceedings in this area?

Mrs. **Gradison**. Jane Mackall, the Director of Proceedings, is prepared to address that question.

Mrs. **Mackall**. The Commission had gone out for public comment immediately following the court remand, asking the parties what we should do with car service.

After the comments had been in and when they were under review, Conrail and the car leasing companies reached an agreement.

That agreement was submitted to the Commission for approval. That agreement has been noticed for comment. Comments were received in early February. They are now under review by the staff.

Mr. **Coughlin**. Please provide a copy of Ex Parte No. 346 (Sub-No. 19) for the record, and include your rulemaking schedule.

[The information follows:]

The various decisions in Ex Parte No. 346 (Sub-No. 19) are provided for the record. The record is now closed and the staff is analyzing the comments. The staff anticipates completion of a written analysis mid-April.

FR-7035-01

INTERSTATE COMMERCE COMMISSION

SERVICE DATE
JUN 27 1984

Ex Parte No. 346 (Sub-No. 19)

BOXCAR CAR HIRE AND CAR SERVICE

AGENCY: Interstate Commerce Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Several petitioners in Ex Parte No. 346 (Sub-No. 8), Exemption From Regulation--Boxcar Traffic (48 FR 20412, May 6, 1983), have requested an opportunity to offer alternatives to our decision in that case, as it pertains to car hire and car service rules for boxcars. This proceeding is instituted for that purpose. It is our conviction that our decision in Ex Parte No. 346 (Sub-No. 8) offers a vast improvement over the prior situation, and that it seems to be working well. Although we reject the idea of returning to the situation that existed before our boxcar decision, those who would offer alternatives to our boxcar decision as it pertains to car hire and car service rules for boxcars, should offer specific, well-developed, constructive proposals containing elements which encourage efficiencies in joint movements.

DATES: Comments are due within 120 days of publication of this notice. Replies are due within 60 days of the close of the initial comment period.

ADDRESSES: An original and 15 copies of any submission should be sent to:

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, DC 20423

Comments should refer to Ex Parte No. 346 (Sub-No. 19).

FOR FURTHER INFORMATION CONTACT:

Louis Gitomer
(202) 275-7245

SUPPLEMENTAL INFORMATION:

The purpose of this proceeding is to offer a vehicle for the public to submit proposals as alternatives to our recent decision in Ex Parte No. 346 (Sub-No. 8), Exemption From Regulation-Boxcar Traffic, 367 I.C.C. 424 (1983), reconsideration denied 367 I.C.C. 746 (1983), appeal pending sub nom. Brae Corporation, et al. v. United States, U.S.C.A. D.C. Circ., No. 83-1462 and consolidated cases.

By separate decision today, we addressed several petitions seeking further stay of the boxcar exemption proceeding as it pertains to car hire rules for boxcars owned or leased by Class III rail carriers. Several petitioners in that proceeding also sought the institution of a separate proceeding to explore alternatives to the car hire aspect of our boxcar decision. We stated our willingness to consider any thoughtful proposal, ranging from stringent regulation to total exemption or deprescription. We also stated our belief that the regulatory scheme which existed prior to our boxcar decision was totally unsatisfactory. It reflected no awareness of supply and demand considerations and, consequently, produced extreme inefficiencies. Specifically, in recent years it has produced excess capacity, idle equipment, and wasteful empty movements. We also stated our conviction that our decision in Ex Parte No. 346 (Sub-No. 8) offers a vast improvement over the prior situation, and that it seems to be working well. For those reasons, we reject the idea of returning to the situation that existed before our boxcar decision. In sum, those who would offer alternatives to our boxcar decision, as it pertains to car hire and car service rules for boxcars, should offer specific, well-developed, constructive proposals containing elements which encourage efficiencies in joint movements.

Authority: 49 U.S.C. 10321(a) and 10505.

Decided: June 26, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne
Secretary

(SEAL)

FR-7035-01

SERVICE DATE
JUN 21 1985

INTERSTATE COMMERCE COMMISSION
[49 CFR Part 1039]
NOTICE
Ex Parte No. 346 (Sub-No. 19)

BOXCAR CAR HIRE AND CAR SERVICE

AGENCY: Interstate Commerce Commission.

ACTION: Scheduling of supplemental comment period for advance notice of proposed rulemaking.

SUMMARY: The Commission grants the petitions of several participants for an opportunity to file supplemental comments in response to proposals advanced in the reply comments received April 25, 1985. Comments were received in response to an advance notice of proposed rulemaking (49 FR 27333, July 3, 1984) which gave commentors an opportunity to offer alternatives to the Commission's boxcar decision in Ex Parte 346 (Sub-No. 8) published at 48 FR 20412, May 6, 1983, as it pertains to car hire and car service rules for boxcars.

DATES: Supplemental comments are due July 24, 1985.

ADDRESS: An original and 15 copies of supplemental comments in Ex Parte No. 346 (Sub-No. 19) should be sent to:

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, DC 20423

Supplemental comments must also be served on all parties of record in both Ex Parte No. 346 (Sub-No. 19) and Ex Parte No. 346 (Sub-No. 8).

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer
(202) 275-7245

Decided: June 14, 1985

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne
Secretary

(SEAL)

EC

SERVICE DATE
NOV 29 1985

INTERSTATE COMMERCE COMMISSION

DECISION

Ex Parte No. 346 (Sub-No. 19)

BOXCAR CAR HIRE AND CAR SERVICE

Decided: November 21, 1985

In response to an advance notice of proposed rulemaking,[1] a number of railroads and several other parties have commented on how, if at all, the Commission should regulate boxcar car hire and car service. Upon consideration of the comments, we propose to adopt a joint proposal submitted by the Consolidated Rail Corporation (Conrail), Brae Corporation (Brae), Itel Rail Corporation (Itel), and the American Short Line Railroad Association (ASLRA) (hereafter, "the ASLRA/Conrail agreement"). We had hoped that all of the parties would have been able to arrive at a general consensus that would improve upon our earlier car hire proposal and at the same time protect the interests of small carriers. However, the proposed rules that we are publishing represent a significant agreement among those parties who have been primarily concerned with this aspect of the boxcar exemption.

Because there is a proceeding governing overall car hire, Ex Parte No. 334 (Sub-No. 6), Review of Car Hire Flexibility, we do not want to restrict our options in this proceeding. Therefore, although we are publishing only one set of proposed rules, we are soliciting comments on all of the other proposals, and reserve the right to renotice other rules if that action is found to be appropriate and preferable to adopting the rules we are publishing here. See the Comments section, *infra*, for a listing of the proposals.

BACKGROUND

The Commission instituted this rulemaking to entertain suggestions for improving the car hire provisions of the boxcar exemption,[2] which allowed railroads to charge car owners up to 35 cents per mile to transport returning empty cars, to reclaim car hire on empty cars held in storage, and to enter bilateral agreements governing car hire, empty movements, and storage.

The car hire provisions of the boxcar exemption (hereafter called "the Sub-No. 8 provisions") were remanded by the Court of Appeals,[3] and subsequently revoked by the Commission.[4] Today, boxcar car hire is governed by the car hire regulations that existed prior to the exemption, except that bilateral agreements governing boxcar car hire, empty movements, and storage are expressly permitted.

THE COMMENTS

Comments were received from the United States Department of Transportation (DOT), 11 trunk line railroads, 30 smaller railroads, ASLRA, car lessors Brae and Itel, 5 shippers, and a labor union.[5]

---

[1] 49 Fed. Reg. 27333 (1984).

[2] Exemption adopted in Ex Parte No. 346 (Sub-No. 8), Exemption from Regulation - Boxcar Traffic, 367 I.C.C. 424 (1983), reconsideration denied 367 I.C.C. 746 (1983).

[3] Brae Corp. v. United States, 740 F.2d 1023 (D.C. Cir. 1984), cert. denied 105 S. Ct. 2149 (1985).

[4] Ex Parte No. 346 (Sub-No. 7), Railroad Exemption - Export Coal, and Ex Parte No. 346 (Sub-No. 8), Exemption from Regulation - Boxcar Traffic (not printed), served May 13, 1985, notice published May 15, 1985, at 50 Fed. Reg. 20419.

The initial and reply comments were divided between those favoring retention of the present regulated car hire system for boxcars and those supporting changes. Among the changes proposed were stabilization of the car-day divisor, prescription of an efficiency ratio, establishment of a uniform car hire rate with revenue pooling, allowance of foreign car loading discounts, imposition of positive or negative loading charges, application of car hire to loaded movements only, approval of a "car hire balancing" pooling agreement, reinstatement of the Sub-No. 8 provisions, abolition of mandatory equipment interchange, and full exemption of boxcar car hire from regulation.

A joint proposal was also submitted by Conrail, Brae, Itel, and ASLRA. The proposal is similar to the Sub-No. 8 provisions, but would exclude the cars of small carriers, freeze the car hire rates on excluded cars, prohibit freight rate differences based on car rental costs, and continue joint rate regulation on traffic transportable by Class III railroads. This proposal is also supported by the Burlington Northern Railroad Company (in part), 19 smaller railroads, and 2 shippers, and is opposed by DOT, 7 major railroads, and 3 smaller railroads.

PROPOSED RULE

We disagree with the suggestions of several commentors that the present system be retained without significant modifications. As was noted in a prior decision:

> The car compensation formula prescribed by the Commission distributes car ownership costs evenly over the days that a car is in use, regardless of whether a car is on the tracks of the railroad that owns it, or on the tracks of another railroad. While this type of regulation seeks to provide car owners with a fair return on their investment, it can have counterproductive effects on car use. Car hire rates remain the same regardless of whether demand for cars is strong or weak. In times of strong demand, severe car shortages often occur, in part because car hire rates do not rise to a level that would match demand to supply. At the same time, an unvarying car hire rate may fail to allocate freight car capacity to the most profitable traffic, impairing the carriers' ability to maximize revenue. When demand is weak, car hire rates tend not to fall as they should to stimulate the use of idle car capacity. Anomalously, in fact, car hire rates tend to rise somewhat when demand is weak, because a surplus of cars reduces the number of active car days over which the ownership costs are distributed. Moreover, empty car mileage tends to increase as originating railroads send foreign cars home

---

[5] Participants were required to serve their comments on the parties of record in this proceeding and in Ex Parte No. 346 (Sub-No. 8). Submissions lacking certifications of compliance with the service requirement are not discussed in this decision.

> empty and load interline shipments in their own cars to maximize car hire earnings. Thus, the current system of car hire rules can distort both short run decisions about the most efficient utilization of cars and long run decisions about optimal fleet size. (Footnotes omitted.) *Exemption from Regulation - Boxcar Traffic*, 367 I.C.C. 424, 447-448 (1983).

The intent of the Sub-No. 8 rules was to offset the power of an originating carrier, by virtue of mandatory equipment interchange and prescribed car hire, to impose excessive car hire obligations on its connections by loading its own equipment. With the leverage gained from the ability to establish storage reclaims and empty mileage charges, the receiving carrier could induce the loading carrier to make reasonable bilateral agreements that would improve the efficiency of loading practices.

Most of the modifications as proposed, do not solve these problems, and have not attracted broad support. The ASLRA/Conrail agreement, on the other hand, appears to offer the greatest potential for both meaningful change and broad acceptance, without creating the uncertainty inherent with other proposals. Indeed, we have previously enumerated the benefits of storage recaims and empty return charges. *See Exemption from Regulation - Boxcar Traffic*, 367 I.C.C. 424, 450-456 (1983), 367 I.C.C. 747, 761-775 (1983), and 367 I.C.C. 900, 901-902 (1983). Further, several comments argued that, in many ways, the Sub-No. 8 provisions worked as intended.

We will, therefore, publish the ASLRA/Conrail agreement as a proposed rule, while accepting comments on all of the other proposals. The specific provisions are set forth in the Appendix.[6] A number of participants have already responded to the proposal in supplemental comments. As we summarize the elements of the proposal, we will note those issues raised by the participants, and we invite comments on the legal issues and the economic impacts (particularly if actual experience under the Sub-No. 8 provisions can be presented).

Section (c)(1) of the proposal[7] is identical to the Sub-No. 8 provisions previously adopted. Section (c)(2), however, provides that Class III carriers and, for four years, those Class II carriers not more than 50 percent owned by Class I carriers: (1) may not exercise the empty return and storage reclaim options, but may make bilateral agreements, and (2) are not subject to empty return charges or storage reclaims on cars bearing their reporting marks that they owned or leased on December 30, 1983. ASLRA asserts that less then 15 percent of the national boxcar fleet would be covered by the exclusion.

Those who consider this exclusion too narrow say that it should be open to "any road which can demonstrate a disadvantage in bargaining power,"[8] and that all cars of small railroads should be excluded, regardless of date acquired.[9]

---

[6] We propose to incorporate the proposal into 49 C.F.R. 1039.14, so that all provisions relating to boxcars will be contained in one place. The proposal has been renumbered accordingly.

[7] As renumbered in the Appendix.

Several major railroads[10] agree to having the Commission notice for comment a four-year transitional exclusion of small carriers, but argue that differing legal rights should not be permanently established for different groups of railroads.

Section (c)(3) provides that excluded cars will continue to earn the car hire rates applicable on January 1, 1985. The rates will not decrease under the car hire formula as the cars age and will not be affected by any changes in the formula. DOT questions whether this provision will result in efficient use of Class II and Class III carriers' cars.

Section (c)(4) of the proposal provides that "no freight rate" that applies to a facility served by a Class III railroad "may discriminate" on the basis of car ownership, car hire rates, or car hire discounts. The ASLRA/Conrail agreement asserts that the Commission could adopt this provision, under 49 U.S.C. 11122, even though it is goes beyond the anti-discrimination provisions of 49 U.S.C. 10741. The supplemental comments of ASLRA justify this aspect of the proposal as necessary to "prevent circumvention of [the small carrier] exclusion." DOT questions this provision in light of the existing boxcar rate exemption. Certain Class I railroads also question the provision's impact on ratemaking flexibility.

Finally, section (c)(5) of the proposal requires regulation of joint rates on boxcar traffic originating or terminating at a facility served by a Class III railroad. This comports with the short lines' previously expressed opposition to the exemption of boxcar joint rates in Ex Parte No. 346 (Sub-No. 8). The CSX-UP-MP-SP-SF group urges that proposals related to boxcar freight rates be considered in that proceeding rather than here.[11] We will consider section (c)(5) here because it is an integral part of the joint agreement.

In summary, we commend all the parties for their efforts to present individual proposals and negotiated agreements. The rules proposed by ASLRA/Conrail are the product of lengthy negotiations, and represent a good faith effort to accommodate the legitimate interest of all parties. Comments on any of the proposals should also include an analysis of the economic effect of the proposal. (Comments on the ASLRA/Conrail agreement should pay special attention to the adverse comments of DOT.)

---

[8] Reply of Illinois Central Gulf Railroad Company (ICG), p. 48.

[9] Indiana Hi-Rail Corporation.

[10] The CSX Railroads (Baltimore and Ohio Railroad Company, Chesapeake and Ohio Railroad Company, Seaboard System Railroad, Inc., and Richmond, Fredericksburg and Potomac Railroad Company), Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, and Atchison, Topeka and Santa Fe Railway Company (CSX-UP-MP-SP-SF).

[11] Ex Parte No. 346 (Sub-No. 8) was reopened for further consideration of the joint rate exemption. Public comments have been received and are under review by the Commission.

"Further, we previously analyzed a similar car hire proposal in the Sub-No. 8 proceedings, and those provisions were in effect for over one year. Some comments indicate the efficient use of boxcars may have been promoted by such provisions. Be that as it may, adoption of the ASLRA/Conrail proposal appears to afford some protection to those small railroads that are most subject to harm from possible abuses by their larger counterparts. Therefore, the Commission proposes to adopt the substance of the ASLRA/Conrail agreement. Participants are invited to address each aspect of the proposal, to comment on the questions raised concerning it, and to recommend other possible modifications, and their justifications, aimed at improving boxcar efficiency through car hire and balancing the interests of Class II and III railroads, in a market-oriented fashion. This notice should not be read to imply any prejudgment of the merits of the issues involved, but rather to indicate that such final rules as may be adopted will have been considered in light of the public comment and suggestions herein invited."

Regulatory Flexibility Certification. The Commission certifies that the proposed rules, if adopted, will not have a significant impact on a substantial number of small entities because they contain provisions designed to insulate small carriers, some of whom may be small entities, from major changes in the current boxcar car hire system. Parties seeking modification of the proposed rules are invited to discuss the extent, if any, to which the modifications would affect small entities within the meaning of the Regulatory Flexibility Act of 1980.[12]

This action will not significantly affect the quality of the human environment or energy conservation.

It is ordered:

1. A notice of proposed rulemaking will be issued to invite comment on the adoption of the described proposal.

2. An original and 15 copies of all comments must be filed with the Commission, and served on all parties by January 2, 1986.

3. This decision is effective on the date served.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley joined by Commissioner Strenio comments with a separate expression. Vice Chairman Gradison joined by Commissioners Andre and Strenio concurred with a separate expression.

(SEAL)

James H. Bayne
Secretary

---

[12] Pub. L. No. 96-354, 94 Stat. 1164, enacting 5 U.S.C. 601-612.

COMMISSIONER LAMBOLEY, JOINED BY COMMISSIONER STRENIO COMMENTING:

This notice should not be construed as limiting comment or pre-ordaining a result. Rather, it constitutes an effort to give appropriate focus and definition to satisfy notice requirements for rulemaking, while at the same time, solicits a sufficient breadth of relevant comment. Ultimate Commission action will reflect consideration of all responsive comments and proposals with a potentially different result. Cf. Ex Parte No. 445 (Sub-No. 1), Intramodal Rail Competition, served October 31, 1985.

Consequently, this notice invites comment not only on the specific proposal set forth, but also on those other suggestions, approaches and/or formulations proposed in comments received in response to our prior ANPR, which approaches are more generally incorporated by reference in this notice; e.g., formula modification proposed by AAR, or deprescription and/or elimination of mandatory interchange as suggested by DOT and others.

VICE CHAIRMAN GRADISON, JOINED BY COMMISSIONERS ANDRE AND STRENIO CONCURRING:

I agree wholeheartedly with the issuance of this proposed rulemaking, because a speedy resolution of all of the issues surrounding car hire is quite clearly a necessity of transportation reform. What concerns me about the notice is that it could be read to postpone the dispatch of Commission business, if it is read as limiting the Commission's options at the close of the comment period to a simple acceptance or rejection of the "Conrail-Brae" compromise. However, I agree with Commissioner Lamboley's separate expression that the Commission's decision does not preordain a particular result. The ultimate Commission action will reflect consideration of all responsive comments and proposals.

While the decision states that the Commission reserves the right to re-notice other rules if that action is found to be appropriate and preferable to adopting the rules published in this decision, I do not read this as requiring re-notice of the proposals fully presented and commented upon in the advance notice of rulemaking and discussed in this notice of proposed rulemaking. However, I would agree that if the Commission found a new proposal or proposals presented by the parties at this stage of the proceeding to be appropriate and preferable for boxcar car hire, then notice and comment would be required.

APPENDIX

Part 1039 [AMENDED]

The title of 49 CFR 1039.14 is amended to read, "Boxcar transportation."

49 CFR 1039.14(c) is amended to read as follows:

"(c)(1) Except as provided in subsection (c)(2), carriers are authorized to take the following actions with respect to boxcar equipment use:

"(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Commission. The empty mileage charge is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustment factors published periodically by the Commission in Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

"(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the car is made empty.

"(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) As provided in this subsection, the authorization in subsection (c)(1)(i) and (ii) of this section will not apply to excluded carriers nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

"(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

"(ii) The boxcar exclusion of paragraph (2) of this subsection will apply:

"(A) to an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

"(B) to an excluded boxcar owned or leased by an excluded Class II carrier during a 4-year period beginning with the effective date of this rule, so long as such boxcar has not been otherwise owned or leased by another carrier during such 4-year period.

"(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within said 4-year period, that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class III carrier on December 30, 1983.

"(iv) Nothing in this subsection will affect the right of any carrier to negotiate bilateral agreements governing car hire rates and rules.

"(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT-10, for any boxcar excluded under subsection (c)(2), will remain in effect without regard to the aging of such car subsequent to January 1 of the year of the service date of the final order promulgating this rule and any modification to the existing car hire formula will not apply to such cars. Any improvements subsequent to January 1, 1985, to the excluded boxcars capitalized under OT-37 criteria or under rebuilt criteria will be subject to the same formula applicable to OT-37 or rebuilt cars under Ex Parte No. 334 or any other railroad car hire proceeding, including any efficiency ratio, if adopted.

"(4) No freight rate made effective after April 1, 1985, that applies to traffic moving by boxcar and originating or terminating at an industry facility served physically by a Class III rail carrier may discriminate while these rules are in effect on the basis of (i) the ownership of the boxcar used or the reporting marks any such boxcar bears; (ii) the car hire rate applicable to the boxcar used; or (iii) any car hire discounts, in the form of reclaims or otherwise, available to any carriers with respect to the boxcar used. Except as prohibited above, carriers may use car ownership or car marks for identification purposes when establishing rates.

"(5) The provisions of 49 U.S.C. 10705 and 10705a applicable to joint rates and through routes will be effective as to rates and routes applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier."

SERVICE DATE
DEC 26 1985

FR-7035-01
CO

INTERSTATE COMMERCE COMMISSION

NOTICE

Ex Parte No. 346 (Sub-No. 19)

BOXCAR CAR HIRE AND CAR SERVICE

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Commission grants an extension of time to file comments in response to the notice of proposed rulemaking published December 3, 1985 [50 FR 49576]. A 60- or 75-day extension was requested by a number of railroads to enable the preparation of detailed comments and to avoid scheduling difficulties during the holiday season. BRAE Corporation, Itel Rail Corporation, and the American Short Line Railroad Association reply that a 30-day period is warranted.

DATE: Comments are due February 3, 1986

ADDRESS: An original and 15 copies of comments in Ex Parte No. 346 (Sub-No. 19) should be sent to:

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, DC 20423

Comments ~~must~~ be served on all parties of record in Ex Parte No. 346 (Sub-No. 19).

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer
(202) 275-7245

Decided: December 20, 1985

By the Commission, Heather J. Gradison, Chairman.

James H. Bayne
Secretary

(SEAL)

NIT LEAGUE-AAR JOINT RATE AGREEMENT

Mr. COUGHLIN. Please also update us for the record on the status of the Commission's consideration of the NIT League-AAR joint rate cancellation agreement.

[The information follows:]

The Commission heard oral agument on July 18, 1985, and voted to adopt the NIT League-AAR agreement with very minor adjustments, in an open voting conference on September 11, 1985. The decision was served October 31, 1985. A copy is provided for the record. The rules basically prohibit joint rate or reciprocal switching activities that are anticompetitive or contrary to the competition policies of the Rail Transportation Policy, 49 U.S.C. 10101a.

EC

INTERSTATE COMMERCE COMMISSION

SERVICE DATE
OCT 31 1985

DECISION

Ex Parte No. 445 (Sub-No. 1)

INTRAMODAL RAIL COMPETITION

Regulations adopted governing proposed cancellations of joint rates and through routes and complaints seeking the prescription of joint rates, through routes, and reciprocal switching.

Decided: October 29, 1985

We are adopting rules to govern the handling of various issues generally referred to as "competitive access," including cancellation of joint rates and through routes, and the prescription of joint rates, through routes, and reciprocal switching.

This proceeding began when petitions were filed on January 23 and 24, 1985, by the National Industrial Transportation League (NITL) and the Association of American Railroads (AAR), asking us to adopt rules that they had negotiated. These rules proposed procedures and standards to govern decisions in competitive access proceedings. The agreement grew out of Ex Parte No. 456, *The Staggers Rail Act of 1980 - Conference of Interested Parties*, where we encouraged railroads and shippers to discuss and attempt to resolve problems arising from implementation of the Staggers Rail Act of 1980 (Staggers Act).[1] We commend all of the parties for their efforts and for presenting a number of proposals and agreements for our review. We have long encouraged negotiated solutions to disputes between shippers and carriers. The rules proposed by NITL/AAR are the product of lengthy negotiations. The agreement reached by NITL and AAR, embodying the rules they propose, while not resolving all the issues, represents a good faith effort to accommodate the legitimate interests of both shippers and railroads.

On March 12, 1985, AAR and the Chemical Manufacturers Association (CMA) filed a joint petition for rulemaking on competitive access issues. Their agreement was consistent with, and clarified the NITL/AAR agreement. Therefore, we will refer to the rules in these two agreements as the AAR/NITL/CMA proposal. On February 26, 1985, Railroads Against Monopoly (RAM), a group of regional railroads, proposed rules containing more specific criteria than those found in the AAR/NITL/CMA proposal. These will be referred to as the RAM proposal.

On March 25, 1985, we served a notice of proposed rules governing our handling of competitive access issues. 50 Fed. Reg. 13,501 (1985). Comments were sought on the rules proposed by AAR/NITL/CMA and by RAM. We also asked for suggestions for modifications or combinations, and their justifications. In response, 78 opening statements and 41 reply statements were filed by numerous parties. Several parties offered proposals of their own. All of the comments have been considered even if not specifically addressed here.

1/ Pub. L. No. 96-448, 94 Stat. (1980).

The Commission heard oral argument on July 18, 1985, and voted to adopt the rules in the Appendix at an open voting conference on September 11, 1985.

BACKGROUND

Under 49 U.S.C. 10705 and 10762, railroads may file, on proper notice, tariffs that cancel joint rates and/or through routes. Under 49 U.S.C. 10707 and 10705, parties may challenge the cancellations or request prescriptions, and the Commission may suspend and investigate the tariffs, prescribe joint rates and through routes, and prescribe divisions of the carriers' revenues. Under 49 U.S.C. 11103, the Commission may require carriers to use terminal facilities jointly with one another, by prescribing terminal trackage rights, and may require them to enter into reciprocal switching agreements.

The AAR/NITL/CMA proposal calls for notification, explanation, and justification of a proposed joint rate or route cancellation prior to bringing a proceeding before the Commission. It also provides that, if a significant amount of traffic is involved, the Commission will suspend a proposed cancellation of a through route and/or joint rate if the cancellation would eliminate effective railroad competition. It sets forth broad criteria under which the Commission would investigate cancellations and prescribe through routes, through rates, and reciprocal switching.

The RAM rules would require the Commission to suspend a proposed cancellation of a joint rate and/or through route if it would reduce effective railroad competition. Its proposal contains strict mileage and revenue-to-variable cost criteria for suspension and investigation of proposed cancellations and the prescription of through routes and joint rates, and standards for the prescription of reciprocal switching and terminal trackage rights.

We have decided to adopt the AAR/NITL/CMA proposal with certain modifications, including some features of the RAM proposal. See Appendix.

In adopting the regulations set forth below, we have attempted to preserve to the maximum extent possible the product of negotiation and compromise among the major carrier and shipper interests. As stated when we initiated Ex Parte No. 456, our goal was to achieve cooperation and consensus among the contending parties to the maximum extent possible. Nevertheless, our authority under the Interstate Commerce Act cannot be delegated; our first obligation is to implement and administer its provisions in a manner consistent with the broader public interest considerations set out in the Rail Transportation Policy under 49 U.S.C. 10101a and the specific provisions of the Act. As a result, in some instances it has been necessary to modify the proposed regulations to ensure that broad public interest considerations are not ignored in the decisional process. We do not believe, however, that these changes alter the proposed rules in a way that would disrupt the compromise that has been achieved.

RULES ADOPTED

A. Notice, Explanation, and Justification. - The rules we are adopting will require the railroads to give 45 days' notice of all cancellations, and to give an affected party, within 10 days of request, an explanation and justification of a proposed cancellation of a through route and/or joint rate. For cancellations under section 10705a, which already contains a 45-day statutory notice requirement (see subsection (f)), the rules do not impose any additional notice requirement. But for cancellations under section 10705(e), they require notification 25 days in advance of the 20-day statutory tariff filing period. (The railroads may provide actual (direct) notice to affected parties 25 days prior to filing the tariff or they may choose to file their tariffs 45 days in advance of the effective date). The additional notice time for cancellations under section 10705(e) is necessary to enable shippers and competing carriers to make a sufficient analysis of a cancellation before it takes effect. The complexity of the various considerations relating to cancellations and the need for substantial data to assess them [see 49 U.S.C. 10705(e)(1)-(3)] makes an expansion of the 20-day lead time appropriate. With the additional notice provided for here, shippers and competing railroads will be afforded a better opportunity to review rate changes and discuss their implications with the canceling railroads. This opportunity for exchange of information and negotiation would be difficult at best under the 20-day period. And, if the negotiation process is to have meaning more time is necessary. We expect this additional notice period to enable parties to resolve their disputes or at least narrow the issues. But even where negotiations are not successful, they will serve to produce a better record on which to decide whether to suspend a proposed cancellation of a joint rate or a through route.

All parties support the requirements for 45 days' notice, explanation, and justification.

We have incorporated the RAM'S propose that a carrier must include pertinent mileage and cost data as part of its justification, and that other information should be included as appropriate in the individual case. This additional information requirement may avoid some disputes, and should aid negotiation of others, and will provide us with a better record if the cancellation is ultimately protested. It is important for a potential protestant to have this information as early as possible, since it must expeditiously seek to negotiate or request suspension, and we have little time in which to make suspension decisions. The protesting party should include any of this justification data that is relevant in the suspension request. To provide greater flexibility, we will not define the term "cost" other than to state that revenue/variable cost ratios will not satisfy the presumption as they do not reflect all the costs of a movement. We also note that neither the mileage nor cost data need be exact. We are using these presumptions as a rough benchmark and, at the suspension level, these data will not be as exact as those developed in the course of a proceeding. Our expectation is that carriers will simply furnish the data they have developed in reaching their decision to cancel.

B. Negotiation. At least 5 days prior to challenging a cancellation of a through route or joint rate or seeking the prescription of a through route, joint rate, or reciprocal switching arrangement, the party intending to initiate such a proceeding must negotiate to resolve its dispute with the prospective defendants. Participation or failure to participate in these negotiations does not waive a party's right to file a timely request for suspension and/or investigation or prescription. The parties may also use arbitration as part of the negotiation process, or in lieu of litigation before the Commission.

The rules for explanation, justification, and negotiation afford sufficient notice of a proposed cancellation to enable shippers and rail carriers to assess the impact of proposed cancellations and to take whatever actions they may regard appropriate to protect their interests. Yet these requirements are not so burdensome as to inhibit the flexibility promoted by the Staggers Act.

The procedures adopted should promote cooperation between railroads and shippers. The notification, explanation, and justification requirement, combined with the negotiation requirement, place both benefits and burdens on railroads proposing competitive access actions and parties affected by them. To the extent that shippers, receivers, and railroads can work together, without resort to litigation, the process of negotiation minimizes the need for our regulatory control. Such cooperation promotes the goals of section 10101a(1) and (2). We conclude that these procedures are in the public interest, and we adopt them under our general rulemaking authority, 49 U.S.C. 10321(a).

C. Suspension. We will suspend a proposed cancellation of a through route and/or a joint rate under the following conditions: (1) the cancellation would eliminate effective railroad competition; and (2) either (i) a protesting shipper has used or would use the through route and/or joint rate proposed to be canceled to meet a significant portion of its current or future railroad transportation needs; or (ii) a protesting carrier has used or would use the through route and/or joint rate proposed to be canceled for a significant amount of traffic. This second condition, requiring that a protesting carrier or shipper demonstrate a significant impact, is in effect a standing requirement imposed by the statute. Under section 10707(c)(1)(B), the Commission may not suspend unless it appears that failure to suspend will cause substantial injury to the protestant (or the party he represents).

We are adopting this suspension standard as contained in the AAR/NITL/CMA proposal because we believe that proof of the requisite standing, together with the competitive impact requirement, will satisfy the suspension criteria of section 10707(c)(1). Under that section, we suspend a proposed cancellation if it would probably be found unlawful and would result in a substantial injury that could not be redressed by the accounting remedy.[2]

The record in this case, as well as our experience in other proceedings, amply demonstrates that the standing requirements serve to identify those situations in which substantial injury can be expected. Shippers who use the affected through route for a significant portion of their rail needs and who protest the cancellation do so because they believe they face rate increases or service diminutions. The injury to their business from the change in transportation costs or services during the pendency of a Commission investigation cannot easily be remedied by refunds if they prevail. Similarly, carriers who use the affected through route for a significant amount of traffic and who protest the cancellation do so because they believe they will lose traffic. The harm against which we must guard is that, absent suspension, the protesting carrier might lose the competitive strength and ability to recover the traffic and/or provide adequate service, even if it ultimately prevails.

We now turn to the statutory requirement that the protestant show a substantial likelihood that it will prevail on the merits. Under section 10705(e), the general standard for judging the merits of these cancellations is "consistency with the public interest." Moreover, Congress has further specifically directed the Commission, in determining the public interest, to consider: (1) the comparative distance, time, and expense of the alternative routes; (2) any reduction in energy consumption that may result from the cancellation; and (3) the overall impact on affected shippers and carriers. Section 10705(e)(1)-(3). Thus, the Commission must consider both efficiency and competitive impacts.

Under the AAR/NITL/CMA proposed test for suspension, we would consider only whether there would remain "effective railroad competition . . . between the origin and destination." While this test is not as broad as the general public interest standard of section 10705(e), we believe that it is sufficiently tied to the public interest standard that it provides a reasonably reliable initial indicator of the probability of eventual success on the merits. Moreover, given the nature and extent of the harm that is risked if we fail to suspend a cancellation of this sort, this test is appropriate because it enables us to make a reasoned decision within the very short time frame we have to make the suspension decision.3/ Potential harm indicates a likelihood of success under the "cancellation impact" factor set forth in section 10705(e)(3). Although the test, on its face, does not address the specific efficiency factors set forth in section 10705(e)(1) and (2), we believe it does reflect efficiency considerations. Efficient operations offer "effective" competition, and therefore, the proposed standard implicitly encompasses efficiency considerations. Cf. Chesapeake & Ohio Ry. v. United States, 704 F.2d 373, 377 (7th Cir. 1983) (for a carrier to cancel its efficient routes in a competitive environment would be "commercial suicide"); Central Vermont Ry. v. ICC, 711 F.2d 331, (D.C. Cir. 1983) (affirming Commission finding in merger proceeding that because of pervasive competition from other modes consolidating rail carriers could not afford to cancel efficient joint rates). Of course, in the proceeding on the merits, the Commission will be able to give more complete consideration to the particular measures of efficiency set forth in the statute.

---

[2] The accounting remedy of section 10707(c)(1) cannot offer adequate protection in the cancellation context because the traffic, if it continues to move by rail, will generally move over the alternative route.

With regard to the competitive analysis, the proposed suspension test limits the inquiry to intramodal competition, and disregards other forms that could provide effective competition. See generallly Market Dominance Determinations, 365 I.C.C. 118 (1981), aff'd sub nom. Western Coal Traffic League v. United States, 719 F.2d 772 (5th Cir. 1983) (en banc), cert. denied, 104 S. Ct. 2160 (1984); Aluminum Company of America v. ICC, 761 F.2d 746 (D.C. Cir. 1985). We believe that, although the Commission's inquiry at the merits stage is not limited to direct rail competition, confining our inquiry at the suspension stage to that one form of competition is reasonable.

Given (1) the complexity of the issues in contested cancellations, (2) the limited time the Commission has to consider and act on suspension requests, and (3) the potential for substantial irreparable harm if proposed cancellations are not suspended, reviewing the merits fully at the suspension stage is impractical. The intramodal test is the easiest form of competition to analyze, and relates directly to the requested remedy (i.e., maintenance of intramodal competition pending the Commission's investigation). Other forms of competition involve more difficult issues of proof regarding the "effectiveness" of the competitive alternative. For example, in considering intermodal competition, the issues include the suitability of the alternative to meet the shipper's needs and its feasibility (both physically and in terms of the price at which it is available).

3/ Our suspension decision is comparable to judicial stays or preliminary injunctions. Thus, we need not require a high probability of success on the merits before we exercise our suspension power. "Probability of success is inversely proportional to the degree of irreparable injury evidenced. A stay may be granted with either a high probability of success and some injury, or vice versa." Cuomo v. Nuclear Regulatory Commission, ______ F.2d ______ (D.C. Cir., July 3, 1985) (slip op at 2); Washington Metropolitan Area, Etc v. Holiday Tours, 559 F.2d. 841, 843, (D.C. Cir. 1977).

Geographic competition typically involves even more complex considerations.[4]

We have added a rebuttable presumption, drawn from items (a)(2) and (3) of the RAM proposal, that effective railroad competition would be eliminated if the distance or the cost of the challenged route is not more than that of any feasible alternative rail route.[5] This presumption gives protestants added protection by reducing the evidentiary burden on them. Since mileage and costs are indicia of efficiency, it is reasonable to preliminarily assume that the canceled route offers effective competition if its cost or mileage are the same or lower. If protestant offers evidence satisfying the presumption, the canceling railroad, to avoid suspension, must then show either that the data is flawed or that, despite it, effective railroad competition would remain. We think the use of rebuttable presumptions here is reasonable and pratical for our initial suspension stage balancing of the competing parties' concerns. A railroad will have an opportunity to rebut such a showing, and we will still be able to make our suspension decisions within the short deadlines.

We have adopted the AAR/NITL/CMA "eliminate effective railroad competition" test for suspension cases, rather than the "reduce effective competition" test proposed by RAM, because the former focuses attention on the effectiveness of the competition rather than the number of competitors. What is important is not the relative change in market share, but rather the effectiveness of the competition that would remain.

Some parties have asked what would constitute "significant" use of a jointrate or through route under these rules. It would be unwise to attempt to quantify, in the abstract, what would or would not be "significant" in each of the many varied situations that might come before us. Nevertheless, we do note that we will be looking at what is "significant" to the protestant. Moreover, it is unnecessary to answer here what may be no more than an academic question as to where the line should be drawn. The term "significant" is a fact-bound one that can best be determined as it applies to the traffic of a particular protestant (or complainant) when the issue arises in an individual case.

D. Investigation. The rules we are adopting explain that we will find the cancellation of a through route and/or a joint rate inconsistent with the public interest if it is contrary to the competition policies of section 10101a or is otherwise anticompetitive. In making this determination we will consider all relevant factors, including: (1) the revenue from the traffic moving over the routes and under the rates in question; (2) the efficiency and costs of the routes in question; (3) the rates charged or sought to be charged by the canceling railroad; and (4) the revenues and costs expected for the affected traffic following cancellation.

---

[4] Limiting the competitive analysis at the suspension stage here is distinguishable from our competitive analysis at the suspension stage in rate reasonableness cases. There the competitive analysis finding of market dominance is a jurisdictional threshold requirement. Moreover, the potential harm involved is different there because it is not generally irreparable. In ordinary rate suspension cases, the harm is higher rates to the shipper, which can be remedied by refunds; in cancellation cases, the remedy is restoration of the through routes and/or joint rates. This operates only for the future, and there is no way to make a protestant whole for the period pendente lite when the cancellation was in effect. Lastly, the loss of competition cannot be remedied if the connecting carrier or a shipper is forced out of the market and is not able to reenter the market readily.

[5] This presumption goes only to proof of elimination of railroad competition. A protestant will still have to show a significant use of the through route or joint rate.

These criteria reflect the statutory public interest standard contained in section 10705(e). Thus, their consideration does not broaden or narrow the inquiry, but focuses the inquiry and offers guidance to the parties. At the same time it preserves our flexibility to take all relevant factors into account in determining whether a proposed cancellation is consistent with the public interest.

The rules specifically provide that a railroad relying on geographic competition has the burden of proving the existence of effective geographic competition by clear and convincing evidence.[6]

In addition, the rules provide that the overall revenue inadequacy of a carrier will not prevent our disallowing an anticompetitive cancellation. This reflects the general policy that the normal joint rate and through route public interest considerations not be outweighted or controlled by the regulatory interest in assisting railroads' efforts to achieve adequate revenues. See 49 U.S.C. 10705(a)(3) ("The Commission may not prescribe - (B) a through route or joint rate applicable to it to assist a participating carrier to meet its financial needs.")

Finally, the rules provide that we will not consider product competition in competitive access cases. This reflects the negotiated agreement between the major railroad and shipper interests. Under the Commission's market dominance regulations, there is "product competition" where a shipper or receiver can use a substitute for the product covered by a challenged rail rate and the railroad whose rate are being challenged competes with the carrier transporting the alternative product. See *Market Dominance*, *supra*, 365 I.C.C. at 128, 130, 134.[7] The Commission's consideration of product competition, as well as geographic competition, in the rate reasonableness context has long been a divisive issue between shippers and carriers. See e.g., *Atchison, T & S.F. R.R.* v. *ICC* 580 F.2d 623 (D.C. Cir. 1983),(Commission's original regulations excluding geographic and product competition affirmed); *Western Coal Traffic League* v. *United States*, 719 F.2d 772 (5th Cir. 1983) (en banc), *cert. denied*, 104 S. Ct. 2160 (1984) (New market dominance regulations providing for consideration of geographic and product competition affirmed). In the market dominance context, the issue is now settled: the Commission considers evidence of both product and geographic competition. *Market Dominance*, *supra*, 365 I.C.C. at *127-131, 135*; *aff'd*, *Western Coal*, *supra*.

We nevertheless believe it is appropriate to forego consideration of product competition in the competitive access area in accordance with the AAR/NITL/CMA compromise proposal. We have the discretion to control the course of our proceedings.

---

[6] This is consistent with the way this issue will be handled in the market dominance context. In Ex Parte No. 320 (Sub-No. 3), *Product and Geographic Competition*, we made that decision in an open voting conference on July 31, 1985.

[7] In another context (merger cases), we have used the term "product competition" to refer to competition for a railroad's "product" in the sense of transportation, rather than to refer to the shipper's product. See e.g. *Union Pacific; Western Pacific, Control - Missouri Pacific*, 366 I.C.C. 459, 505 (1982), *aff'd*, *Southern Pacific Transp.* v. *ICC*, 736 F.2d 708 (D.C. Cir. 1984). See also *Central Vermont Ry., Inc.* v. *ICC*, 711 F.2d 331, 335 (D.C. Cir. 1983). It is clear the parties intended to exclude here product competition as the term is used in the market dominance regulations, and not in the merger area.

See *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council*, 435 U.S. 519 523-25 (1978). We feel less constrained in exercising that discretion, to focus the inquiry to the most probative areas, in competitive access cases than we do in market dominance cases. This is because the market dominance determination is *jurisdictional*. We are statutorily barred from finding a rate unreasonably high or prescribing a maximum reasonable rate unless there is market dominance. 49 U.S.C. 10701a(b)(1), and 10709. For that reason, we cannot fail to consider evidence that determines our jurisdiction to consider the case. By contrast, our jurisdiction in the competitive access context is not limited in such manner. Indeed, our discretion in setting joint rates or through routes under section 10705(a)(1) is very broad: the Commission "*may*, and shall when it considers it desirable in the public interest, prescribe through routes, ..." (Emphasis added.)

Although a competitive analysis (including many of the same kinds of evidence that we consider in the market dominance area) is of course crucial to our consideration of "competitive access" cases, the potential relevance of product competition is more tangential to the injury. For example, where a carrier, rather than a shipper, is seeking competitive access under section 11103, the existence *vel non* of product competition (in the sense of whether or not a particular shipper can use substitute products in its business) is not relevant to the central question of whether a second carrier should have access to the shippers to transport the primary product. Similarly, where the gravamen of a shipper's competitive access complaint relates to the service available for shipping a particular commodity, rather than the rate level, product competition is not likely to be important to the inquiry. In general, demonstrating the availability and substitutability of alternative products for a particular shipper is so unlikely to be material in the competitive access area that we think that exclusion of such evidence is permissible.

Because product competition is the least direct of all forms of competition, it tends to be both the most difficult to demonstrate and the least often shown to be effective. Subissues regarding the substitutability of products[5] are not within our primary area of expertise and divert significant time and effort (both by the parties and the Commission) away from consideration of the many issues more likely to affect our ultimate determination in the case. Therefore, we have decided to adopt this aspect of the parties' proposal.

E. *Prescription*. - The rules provide that we will prescribe a through route or a joint rate under section 10705, or reciprocal switching under section 11103, if (1) the prescription is necessary to remedy or to prevent an act contrary to the competition policies of section 10101a, or is otherwise anticompetitive, and (2) the shipper or carrier requesting it meets the standing requirements discussed under the suspension section.

The criteria for prescription parallel the criteria for investigation. The joint rate and through route issues are the same in the two settings and, therefore, we apply the same analysis.[9] See Pittsburgh & Lake Erie R.R. Co. v. Consolidated Rail Corp., supra. To the extent that these criteria are relevant to reciprocal switching requests, they will be applied, as will the statutory standards.

---

[5] This significant subissue distinguishes product competition from geographic competition, which has also been a controversial part of our competitive analysis in market dominance cases.

Again, we have eliminated consideration of product competition, and have shifted to the railroads the burden of proving geographic competition. In investigation proceedings, because the canceling railroads bear the general burden of proof, this provision makes no change in those proceedings. However, it is a significant provision to the extent that the standards for cancellations are used to determine, in a complaint proceeding requesting a prescription, whether a joint rate or through route will be prescribed under section 10705(a). See, e.g., No. 39176, Pittsburgh and Lake Erie Railroad Company v. Consolidated Rail Corporation (not printed), served April 9, 1985. In that context, the complaining party would otherwise bear the burden of proof. We believe that this allocation of the burden of proof represents a fair accommodation, given the substantial task involved in developing the record in these proceedings and the difficulties associated with fully analyzing geographic competition. Also, the overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription. We have already discussed the reasons for these provisions.

PROPORTIONAL RATES

The agreement itself does not cover proportional rates. The parties to the agreement have differed as to whether the Commission should exercise its discretion to construe the terms "through route" and "joint rate," in the context of this rulemaking, as including proportional rates. NITL and a number of shippers and trade associations argue that the inclusion of proportional rates is a necessary ingredient in the competitive access arena, and the CMA supplemental proposal actually includes specific language on proportional rates. AAR and several individual railroads, on the other hand, have opposed the inclusion of proportional rates in this proceeding or have challenged our jurisdiction to prescribe them.

In general, the Commission can interpret "through route" and "joint rate" to include proportional rates. It has prescribed these rates in the past and retains the authority, under 49 U.S.C. 10705 and under general rulemaking powers at 49 U.S.C. 10321, to prescribe them. A proportional rate is, by definition, part of a joint or through rate, and there is no question that the Commission has the authority to require each carrier potentially participating in a joint movement to participate in opening or maintaining a through route. Thus, a prescription of the rate for each participant in the through route would involve, in effect, the prescription of proportional rates through prescription of the joint rate as well as the division. In fact, the Commission has, in the past, prescribed rates and broad rate structures that have been implemented or complied with through publication of proportional, rather than joint, rates particularly in the transportation of grain. See, e.g. *Southern Kansas Grain Asso.* v. *C. R.I. & P. Ry. Co.*, 139 I.C.C. 641 (1928); *Grain to, from, and within Southern Territory*, 259 I.C.C. 629 (1945); *Southeastern Assn. of R. & Util. Commrs.* v. *A., T. & S.F. Ry.*, 321 I.C.C. 519 (1964). In addition, a prescribed proportional rate structure was also involved in the Commission's class rate prescriptions. See *Conrail Surcharge on Pulpboard*, 362 I.C.C. 740 (1980); *Consolidated Rail Corp. - Eliminate Dk. No. 28300*, 364 I.C.C. 615 (1981); *See generally Seaboard Coast Line R.R.* v. *United States*, 728 F.2d 1482 (11th Cir. 1984). Therefore, as a general matter, the Commission has the authority to prescribe proportional rates.

---

[9] Investigations are conducted when a carrier has proposed to cancel an existing joint rate and/or through route and the Commission has, in its discretion, required the carrier to justify the cancellation. Prescriptions are considered upon a complaint by a connecting carrier or shipper asking that a joint rate or through route be compelled or reinstated. There are only two practical differences between the two settings. One is that the canceling railroad bears the burden of proof in an investigation, whereas the complainant seeking the joint rate or through route bears the burden of proof in a prescription proceeding. The other difference is that if we find that a joint rate is required, we normally do not consider what the appropriate level of the joint rate should be in an investigation, since the direct action we can take in an investigation context is simply to require the existing joint rate to be maintained. But in a prescription proceeding, where there is no joint rate in effect, we can order reestablishment of the prior joint rate or determine the appropriate rate level, as well as the division of the revenues between the carriers, where the carriers do not agree on it themselves.

Likewise, in the context of competitive access issues, "through route" and "joint rate" can be interpreted to include proportional rates. Again, both the statute and past practices (as cited above) support this conclusion.

While we have the power and authority to prescribe proportional rates, the issue we face here is whether we should adopt a rule that would *require* us to prescribe a proportional rate under certain circumstances. We think doing so would be undesirable at this time. In this proceeding, we are adopting a number of significant changes that should prove helpful to shippers by enhancing competitive access. We think it advisable to assess the effectiveness of these changes before making additional modifications to our rules that would hamper our flexibility to handle proportional rates issues, when raised, on a case-by-case basis.

The rules we are adopting, moreover, have their foundation in an agreement that does not incorporate the prescription of proportional rates. The agreement is the product of negotiation and compromise, and we hesitate to introduce a new element whose interactive effect is unclear.

We also are concerned about how a proportional rates pricing system would affect railroad rates in general, particularly in light of our application of the theory of differential pricing. In addition, no proportional rate could be set below the jurisdictional threshold of 180 percent, and as a result, whether such an approach would provide the relief the parties seek is not free from doubt.

Finally, we note again that the parties disagreed on the question of whether a reference to the prescription of proportional rates should be incorporated in our competitive access guidelines. In our view, it is not necessary to resolve this disagreement in order to issue rules that conform with the Act. Consequently, for the above reasons, we believe it is unnecessary to state, within the context of the guidelines we have adopted, what future action we might take with respect to the possible prescription of proportional rates. The fact that we *can* do so is already clearly established, and the questions of *whether* and how we *should* do so (including resolution of the issues raised above) *will* be best resolved within the framework of case-by-case analysis, in which we can focus on the specific factual circumstances of actual situations.

F. *Effect of Commission Determinations*. - The rules state that Commission determinations in competitive access proceedings shall not be given any *res judicata* or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

The parties to the agreement have requested adoption of this rule. We only note that it is unenforceable by us.

G. *Application of Rules*. - The rules we are adopting will apply to *pending proceedings*. It is well settled that courts and agencies should decide pending cases on the basis of the rules and standards in effect at the time of decision, unless there is clear legislative direction to the contrary or unless to do so would result in manifest injustice. See *Bradley* v. *Richmond School Board*, 416 U.S. 696, 711-716 (1974); *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 281 (1969); *National Labor Relations Board* v. *New Columbus Nursing Home, Inc.*, 720 F.2d 726, 729 (5th Cir. 1983); *New England Power Co.* v. *United States*, 693 F.2d 239, 244-5 (1st Cir. 1982).

RULES PROPOSED BUT NOT ADOPTED

I. THE RAM PROPOSAL

We have incorporated mileage and cost tests as rebuttable presumptions in the new suspension standards. But we have not adopted the remaining features of the RAM proposal.

A. Suspension. RAM has proposed a four-part disjunctive test for suspension. If a railroad should fail any part of the test, suspension would be automatic. Under the RAM proposal the Commission would suspend a tariff if:

(1) The proposed cancellation would reduce effective competition for the affected traffic between origin and destination; or

(2) The mileage between the origin and destination over the joint rate or route proposed to be canceled is not more than the mileage of the joint rates and routes that would remain in effect after the cancellation; or

(3) The ratio of revenue to variable cost for the canceling carrier from the affected joint rate and through route is equal to or greater than the lowest ratio from the canceling carrier's alternative joint or single-line rate; or

(4) The canceling carrier failed within 10 days of request to supply a full justification for the cancellation (including relevant mileage, revenue, and variable cost data adequate to compare efficiency and profitability).

The proposed rules are initially attractive in that they are mechanical and easy to apply, but they are arbitrary and do not afford discretion to take into account the circumstances of individual cases. Nor do the proposed rules satisfy the criteria of section 10707(c), which require that the party seeking suspension show that it is substantially likely to prevail on the merits and that it will be substantially injured by the proposed rate change. We cannot find that each of RAM's trigger mechanisms would individually satisfy the suspension standard.

We have already commented on RAM's proposed "reduce effective competition" test. As we explained, a mere reduction in the number of carriers in a market does not necessarily imply a reduction in competition.

For the reasons discussed above, RAM's mileage test may be used as a reasonable preliminary indicator of efficiency, and thus serves well as a rebuttable presumption. However, as an absolute standard automatically triggering suspension, without regard to any other factors, it is inadequate. It disregards other elements of efficiency (such as time, fuel, and other expenses) and does not allow us to consider the comparative operating conditions of the routes involved (number of interchanges, traffic mix, terrain, etc.). See P&LE, supra, slip op. at 8.

Although we are not adopting RAM's "ratio of revenue to variable cost" test for suspension, it has prompted us to include in the rules the cost presumption discussed above. We believe this meets the basic objective of RAM's ratio test. But it avoids reliance on an accounting figure (the ratio of revenue to variable cost) that does not fairly measure the costs of serving the traffic or accurately reflect the profitability of the service to the carrier. Moreover, it allows us to look at the relative costs and revenues overall on alternative routes as well, rather than limiting our analysis to the canceling carrier's portion of the through route. Thus, we can make a more informed decision as to the relative efficiency and competitiveness of the routes under comparison.

RAM's proposal for automatic suspension on failure to provide requested justification is also unacceptable. Disregard or abuse of the justification requirement by the canceling railroad is certainly relevant and could warrant an adverse inference supporting suspension. However, the proposal is too rigid and does not allow for consideration of legitimate reasons for a carrier's refusal or failure to provide all the data requested. Indeed, there is the danger that protestants could abuse such a provision by making unreasonable information requests, if a failure by the railroad to supply all the requested information within the specified time would trigger an automatic suspension.

B. Investigation or Complaint Against Cancellation[10] - Under the RAM proposal, the Commission would determine that a proposed cancellation is not consistent with the public interest if the cancellation fails to meet either the ratio of revenue to variable cost test or the "reduce effective railroad competition" test. We have already discussed and rejected RAM's "reduce" competition test, and explained why its ratio of revenue to variable cost test has only limited value, and is not appropriate for an ultimate standard. However, the rules we are adopting specifically provide for consideration of such ratio evidence to the extent that it serves to indicate the relative efficiency and competitiveness of alternative routes.

C. Prescription.

1. Through routes and joint rates. Under the RAM proposal, the Commission would prescribe new through routes and joint rates where necessary to remedy or prevent an anticompetitive practice or on the basis of the ratio of revenue to variable cost test already discussed. We have already discussed its ratio standard. The proposed standard of "anticompetitive practice" is vague and apparently more restrictive than the public interest standard of section 10705, which governs prescriptions. The test proposed by AAR/NITL/CMA, which we have adopted, permits consideration of all public interest concerns. It also contains more specific criteria that serve to focus the proceeding.

2. Reciprocal Switching. RAM also proposed standards for the Commission to use in considering requests to prescribe reciprocal switching arrangements.

---

[10] The RAM proposal distinguishes between complaints asking that a former joint rate or through route be reinstated and those asking that a new joint rate or through route be prescribed.

Reciprocal switching refers to a situation where one carrier switches, to or from shippers on its tracks, cars in the line-haul service of another carrier and receives a switching charge rather than a part of the line-haul rate.[11]

Historically carriers generally switched for each other without regard to cost, believing that this accommodation best served their interest in the long run. However, there is now an increasing trend for carriers to price each element of their services, including switching, in accordance with its cost.

Under the RAM proposal, the Commission would order reciprocal switching, provided certain standing requirements were met, if the switching arrangement would satisfy the statutory criteria of section 11103(c) -- i.e. it would either be "practicable and in the public interest" or "necessary to provide competitive rail service." The RAM proposal also provides that, in setting the compensation to be paid by the beneficiary carrier to the switching carrier, the Commission would use a "fully allocated cost" standard as a ceiling.

We have rejected the use of a fully-allocated cost standard for pricing railroad service as arbitrary and economically unsound. See Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines--Nationwide*, ____ I.C.C. 2d ____ (slip op. served September 3, 1985). See also *Potomac Electric Power Co. v. United States*, 744 F.2d 185 (D.C. Cir. 1984) (Commission rejection of a fully-allocated cost standard sustained in coal rate case). This is because we have not been able to determine a satisfactory accounting method of allocating the substantial joint and common costs experienced in the rail industry. Consequently, we will leave for determination in each individual case what would be a fair and appropriate level of compensation for the switching services in the particular circumstances involved.

3. *Terminal Trackage Rights*. The RAM proposal also contained a provision for the Commission to prescribe terminal trackage rights (i.e. require one carrier to share its terminal facilities with another) under section 11103(a) on a basis that would put the "tenant" carrier in the same position as the owning carrier where the Commission finds prescription practicable and in the public interest. CMA also requested that we prescribe terminal trackage rights, but on the basis of the standards developed by AAR/NITL/CMA for prescription of joint rates, through routes, and reciprocal switching.

RAM's proposed standard for compensation -- "put the tenant in the same position as the owning carrier" -- is derived from our decision in Finance Docket No. 30,000 (Sub-No. 16), *St. Louis Southwestern Railway Company - Trackage Rights over Missouri Pacific Railroad Company - Kansas City to St. Louis*, ____ I.C.C. 2d ____ (served August 30, 1984), slip op. at 10. We restricted that approach to "the immediate setting where trackage rights have been imposed to remedy anticompetitive effects of a consolidation." *Id*. RAM does not offer a clear explanation of why the same approach should be used for the prescription of terminal trackage rights in general.

More importantly, RAM's proposal does not conform to the statutory standard for compensation in terminal access proceedings, which directs the Commission to set "compensation for use of the facilities under the principle controlling compensation in condemnation proceedings." 49 U.S.C. 11103(a).

---

[11] When a shipper is located on the tracks of the line-haul carrier, the line-haul carrier's rate includes the switching costs to place the car on and off the siding. When a shipper is not located on the tracks of the line-haul carrier, the switching carrier may charge for moving the car from the interchange track to the shipper. The line-haul carrier usually absorbs these charges and the shipper pays only the line-haul carrier's rate. Switching arrangements are generally established mutually between carriers serving a station or switching district. However, they can be ordered by the Commission under section 11103.

In addition, there is no present need to adopt rules for prescription of terminal trackage rights. Such rights have rarely been sought in recent years, and we do not anticipate a surge of such cases. The joint rates, through routes, and reciprocal switching mechanisms should be sufficient to provide shippers and carriers with ample competitive access where necessary. In any event, we can consider requests for terminal trackage rights on an individual case basis, under the statute and existing law, without having rules in place.

Finally, RAM's proposed rules provide that its standards for reciprocal switching and terminal trackage rights would not apply to a "railroad having less than two percent of the railroad industry gross freight revenue." This includes all of RAM's members except the SOO/Milwaukee Railroad. Many of RAM's members oppose its proposals for reciprocal switching and joint use of terminals. RAM itself opposes adoption of its proposed standards without the "small railroad" exception it proposes. We see no merit to such an inconsistent regulatory policy here.

II. THE CMA SUPPLEMENTAL PROPOSAL

In a Supplemental Petition filed March 29, 1985, CMA requested that we modify the AAR/NITL/CMA proposal to include prescription of proportional rates.[12] As previously discussed, we will defer consideration of proportional rate prescription.

III. THE REVENUE-VARIABLE COST TEST

Several shippers, primarily grain concerns, have suggested that we set a railroad's maximum line-haul rates at the revenue-variable cost level of its connecting carrier, subject to a fully allocated cost floor. This proposal is similar to RAM's ratio of revenue to variable cost test that we have already rejected. The test is mechanical and relatively easy to apply (except with respect to the "fully allocated" cost floor, which we have discussed above). However, the proposed standard is arbitrary and would return us to the rigidity of pre-Staggers Act ratemaking because it does not take competitive market forces into account. Moreover, an approach of this type would likely lead to inefficiencies, and ignores the concept of differential pricing. See Coal Rate Guidelines--Nationwide, supra.

IV. THE RMA PROPOSAL

The Rubber Manufacturers Association (RMA) proposes that the Commission, on request of a shipper or a connecting railroad, prescribe rates for origin and termination services at the statutory threshold of the Commission's jurisdiction over maximum reasonable rates. This proposal presents a threshold problem of defining origins and destinations all over the country, which could prove to be an enormous task for which we have no readily available guidelines. More fundamentally, the proposal is inconsistent with the purpose underlying section 10709(d)(4)--that the statutory threshold for Commission jurisdiction over railroad rate reasonableness not be misused as a regulatory pricing level. Furthermore, the pricing proposal has the same deficiencies already discussed with regard to the RAM and CMA proposals.

V. THE CI/FI PROPOSAL

The Chlorine Institute (CI) and the Fertilizer Institute (FI) have proposed that the Commission decide competitive access issues under the standards in sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. 1 and 2. Section 1 covers combinations in restraint of trade, and section 2 deals with monopoly and attempts to monopolize.

---

[12] CMA also asked that the rules address joint use of the terminal facilities. We have already discussed our reasons for not doing so, in the context of the RAM proposal above.

Under the adopted rules, we will consider the competition policies of the Rail Transportation Policy and other aspects of competition. The CI/FI proposal would have us act as an antitrust court and focus exclusively on antitrust concerns, rather than administering the Act, with its emphasis on comparative transportation efficiencies. The Supreme Court has noted that we do not sit as an antitrust court in determining compliance with the antitrust laws. *Cf.* *Northern Lines Merger Cases*, *396 U.S. 509, 514* (1970). Our statutory obligation under the public interest standard is broader than the antitrust laws. *Cf. McLean TruckingCo.* v. *United States*, 321 U.S. 67, 87 (1944). CI/FI's proposed use of the antitrust law as a substitute for the public interest test of section 10705(e) would impermissibly narrow our focus in assessing cancellations. Also, it is far from clear that adopting this proposal would serve the interests of shippers.

CONCLUSION

The rules we are adopting here respond to many of the shipper and small carrier concerns and should facilitate efforts to ensure reasonable competitive access where needed. This in turn will give shippers more routing alternatives, while promoting competition among railroads. At the same time, with our recent determination to refine our market dominance procedures (see n. 6, *supra*) and with the pricing criteria that we recently adopted in *Coal Rate Guidelines*, *supra*, there will be closer scrutiny of railroad pricing where there is not currently effective competition. Together, these various actions should improve our implementation of the twin Staggers Act goals of railroad revenue adequacy and shipper protection from monopoly pricing.

This decision will not significantly affect the quality of the human environment or energy conservation. Nor will it have a significant adverse economic impact on a substantial number of small entities.

List of subjects in 49 C.F.R. Part 1144:

Intramodal competition
Competitive access
Railroads

Authority: 49 U.S.C. 10321, 10703, 10705,

10707, and 11103, and 5 U.S.C. 553.

It is ordered:

1. The rules set forth in the Appendix are adopted.

2. Notice of this decision will be published in the *Federal Register* on November 6, 1985.

3. This decision is effective when served October 31, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Strenio commented with a separate expression. Commissioner Lamboley will submit a separate expression at a later date.

James H. Bayne
Secretary

(SEAL)

COMMISSIONER STRENIO, commenting:

The decision in this proceeding amounts to a giant stride forward in responding to complaints the Commission has received about a lack of access encountered by some shippers and carriers. As a result, the Commission has substantially liberalized the conditions under which we will grant competitive access to shippers and competing carriers when requested.

More specifically, the Commission has adopted virtually in its entirety the NITL-CMA-AAR Agreement as presented to us. Thus, we have granted almost every request that these three groups agreed to amongst themselves and submitted to us as their package proposal. This constitutes a significant change in the way the Commission will determine competitive access issues in the future, and clearly demonstrates the Commission's deep - and unanimous - commitment to a fair balancing of the views of diverse groups in reaching public interest determinations.

The Commission has also adopted several elements presented in the RAM proposal. These additional changes, while not present in the original NITL-CMA-AAR proposal, are consistent with the spirit of that proposal, and enhance further the liberalization achieved in the NITL-CMA-AAR document. Shippers will get further benefits as a result of these additions.

The Commission has also given serious consideration to a host of other proposals. While we ultimately could not adopt them all, the exercise has given the Commission greater insight into the concerns of the groups presenting the proposals. I hope the reverse is true as well, namely that all the groups participating in Ex Parte No. 445 conclude that they have received a respectful and attentive hearing even if their solutions were not adopted at this time.

There is one element of the final rule with which I cannot in good conscience agree: the total exclusion of product competition from consideration in determining the existence of effective competition. I think the Commission should not preclude itself from examining all factors relevant to assessing the competitiveness of any given situation. For this reason, I would have preferred that we treat product competition the same way we are treating geographic competition, i.e., shifting to the railroads the burden of trying to prove its existence by clear and convincing evidence.

On the whole, however, I think this decision represents yet another positive element in a series of cases that respond sympathetically to shipper concerns. We have overhauled our maximum rate guidelines for coal in Ex Parte No. 347 so that they are more favorable to shippers, and we have shifted a much heavier burden of proof onto railroads -- and off the shoulders of shippers -- in market dominance determinations by our decision in Ex Parte No. 320. Such remarkable change in such a short period of time should shatter for good any remaining perception that the Commission is unable or unwilling to fine-tune its implementation of the Staggers Act.

APPENDIX

PART 1144 - INTRAMODAL RAIL COMPETITION

Sec.

1144.1 Notification, explanation, and justification.

1144.2 Negotiation.

1144.3 Suspension.

1144.4 Investigation of proposed cancellations.

1144.5 Prescription.

1144.6 General.

§1144.1 Notification, explanation, and justification.

(a) Notification. A rail carrier proposing to cancel a through route and/or a joint rate shall comply with the requirements of 49 U.S.C. 10762(c)(3) and 10705a(f), as appropriate, and 49 C.F.R. 1312, and shall give notice of its intent to make such a cancellation 45 days prior to the effective date of the cancellation. For cancellations under 49 U.S.C. 10765(e), the 45-day period must consist of at least a 25-day notice of intent to file followed by a 20-day tariff filing in compliance with 49 U.S.C. 10762(c)(3).

(b) Explanation and justification.

(1) Request. After a rail carrier has given notice of a proposed cancellation, any affected party may ask the canceling rail carrier to (i) explain how the proposed cancellation will affect the party, and (ii) justify the application of the cancellation to a route or rate actively used by or participated in by the party.

(2) Reply. The rail carrier proposing the cancellation must give the party the requested explanation and justification, including pertinent mileage and cost data, within 10 days of the date the request is made.

(3) Time. By mutual agreement, the rail carrier proposing the cancellation and the affected party may alter the time frames of (2) above. The 49 C.F.R. 1312 time periods for protest and replies apply. The failure to provide information necessary to analyze the action under the criteria established in §1144.3 may be treated as an admission against interest.

(4) Content. The content of the request and reply (other than pertinent mileage and cost data) will be left to the parties, though all information pertinent to the individual case should be included. The failure to provide information necessary to analyze the action under the criteria established in §1144.3 may be treated as an admission against interest.

§1144.2. Negotiation.

(a) Timing. At least 5 days prior to challenging a cancellation of a through route or joint rate, or seeking the prescription of a through route, joint rate, or reciprocal switching, the party intending to initiate such action must first seek to engage in good faith negotiations to resolve its dispute with the prospective defendants.

(b) Participation. Participation or failure to participate in good faith negotiations does not waive a party's right to file a timely request for suspension and/or investigation or prescription.

(c) Arbitration. The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Commission.

§1144.3 Suspension.

(a) General. Under these rules the Commission will suspend and investigate, investigate, or not suspend and investigate a proposed cancellation of a through route and/or joint rate. A persuasive presentation under all of the criteria below is sufficient for the Commission to determine that the requirements of 49 U.S.C. 10707(c)(1) have been met warranting suspension and investigation of the proposed cancellation. Failure to convince the Commission on any one of the criteria may result in either only an investigation (no suspension) or a determination not to investigate. This will be decided on a case-by-case basis.

(b) Statutory factors. A decision under (a) will be made based on the broad factors in 49 U.S.C. 10707(c)(1). The criteria considered in analyzing the factors in 49 U.S.C. 10707(c)(1)(A and B) are in (c) below. The requirements to keep account under 49 U.S.C. 10707(c)(1)(C) cannot be applied to cancellation cases, and will not be considered.

(c) Criteria. The Commission will suspend and investigate if a protestant shows:

(1) The cancellations of a through route and/or joint rate would eliminate effective railroad competition for the affected traffic between the origin and destination. Among other evidence, the Commission will consider two rebuttable presumptions to show the elimination of effective railroad competition: (i) that the mileage between the origin and destination over the route to be canceled is not more than that of any feasible alternative rail route; and (ii) that the cost of operating via the route to be canceled is not more than that of any feasible alternative rail route; and

(2) Either (i) a protesting shipper has used or would use the through route and/or joint rate proposed to be canceled to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or (ii) a protesting carrier has used or would use the affected through route and/or joint rate for a significant amount of traffic.

(a) General. The Commission must determine that a proposed cancellation of a through route and/or joint rate is contrary to the public interest under 49 U.S.C. 10705 if it finds that the cancellation, or a rate that would remain in place after the cancellation, is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive.

(b) Factors. In making its determination, the Commission will take into account all relevant factors, including:

(1) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(2) The efficiency of the rail routes in question, including the costs of operating via those routes.

(3) The rates charged or sought to be charged by the canceling railroad or railroads.

(4) The revenues, following the cancellation, of the involved railroads for the traffic in question via the affected through route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier will not be a basis for finding that a cancellation is anticompetitive.

(c). Other considerations.

(1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) Where a cancellation has been determined to be contrary to the competitive standards of this section, the overall revenue inadequacy of the canceling carrier will not excuse such a cancellation.

(4) Any investigations of proposed cancellations under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

§1144.5 Prescription.

(a) General. A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11103, if the Commission determines:

(1) That the prescription or establishment (A) is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive, and (B) otherwise satisfies the criteria of 49 U.S.C. 10705 and 11103, as appropriate. In making its determination, the Commission shall take into account all relevant factors, including:

(i) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(ii) The efficiency of the rail routes in question, including the costs of operating via those routes.

(iii) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(iv) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section; and:

(2) That either:

(i) the complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) the complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

(b) Other considerations.

(1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) When prescription of a through route, a through rate, or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription.

(4) Any proceeding under the terms of this section will be conducted and concluded by the Commission on an expedited basis.

§1144.6 General.

(a) These rules will govern the Commission's adjudication of individual cases pending on or after the effective date of these rules (October 31, 1985).

(b) These rules supersede the rules at 49 C.F.R. Part 1132 to the extent they are inconsistent.

(c) Discovery under these rules is governed by the Commission's general rules of discovery at 49 C.F.R. Part 1114.

(d) Any Commission determinations or findings under this Part with respect to compliance or non-compliance with the standards of sections 1144.4 and 1144.5 of this Part shall not be given any res judicata or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

RAIL ABANDONMENTS

Mr. **Coughlin**. Moving on to rail abandonments, some have criticized the Commission for being too liberal in granting these abandonments.

We were told last year that the main reason the Commission has granted so many abandonment applications is that they have all been simple and easy ones, and that the tougher questions are now starting to come before the Commission.

Do you agree with that assessment and, if so, should we expect to see a greater percentage of denials in the future?

Mrs. **Gradison**. Let me say that they were not easy. They may have been characterized as such. The statute did have very specific guidelines that we had to follow, but no abandonment is easy to decide.

The ones that will be coming before us are even tougher. That is a correct characterization. Investigations are instituted in the more controversial and closer cases. Though we will have fewer cases before us, they will be closer to the edge, with regard to their disposition.

RAIL ABANDONMENT DATA

Mr. **Coughlin**. Please update for the record the rail abandonment data found on pages 799 through 811 of last year's hearing record.

[The information follows:]

The information presented below is the result of two recent studies of post-Staggers Act abandonments.

ABANDONMENTS SINCE THE STAGGERS ACT

Fiscal Year	Filed		Granted		Denied		Dismissed	
	No.	Mi.	No.	Mi.	No.	Mi.	No.	Mi.
Applications								
1981	161	3,219	81	1,342	1	12	11	25
1982	382	4,821	381	5,151	3	52	34	696
1983	178	3,702	123	2,454	2	28	7	91
1984	472	3,878	419	3,083	7	548	5	69
1985	138	2,877	148	2,343	8	219	30	657
1986 to date	38	840	48	932	2	61	1	22
Subtotal	1,369	19,337	1,200	15,305	23	920	88	1,560
Notices of Exemption [1] [2]								
1985	81	412	76	408	0	0	2	36
1986 to date	28	215	39	181	0	0	0	0
Subtotal	109	627	115	589	0	0	2	36
Petitions for Exemption [1]								
1985	12	216	43	299	0	0	4	10
1986 to date	12	66	8	55	0	0	2	1
Subtotal	24	282	51	354	0	0	6	11
Total	1,502	20,246	1,366	16,248	23	920	96	1,607

No. = number filed
Mi. = mileage

---

[1] There were some notices and petitions for exemption filed pre - 1985. They total 100-150 cases. Computer records do not include them.

[2] Notices of exemption are the "out of service" line class exemptions.

ABANDONMENT APPLICATION OPPOSITION*

FY	UNOPPOSED		OPPOSED	
	No.	Mileage	No.	Mileage
85	38	596	53	1756
84	29	411	96	2330
83	34	520	76	2174
82	44	506	75	2594

INVESTIGATION RATIO*

FY	OPPOSED		TOTAL INVESTIGATED		PERCENTAGE INVESTIGATED	INVESTIGATED UNDER MODIFIED PROCEDURE		INVESTIGATED UNDER ORAL HEARING	
	No.	Mileage	No.	Mileage		No.	Mileage	No.	Mileage
85	53	1,756	47	1,564	89%	43	1,356	4	208
84	96	2,330	47	1,505	49%	39	903	8	602
83	76	2,174	34	1,257	45%	30	942	4	315
82	75	2,594	41	1,688	55%	N/A	N/A	N/A	N/A

---

*This list does not include Conrail NERSA abandonments.

NEW YORK CITY RAIL ABANDONMENT

Mr. **Coughlin**. Please also update for the record the status of the West 30th Street track abandonment case (Docket No. AB–167) that we discussed last year.

[The information follows:]

On August 9, 1985, the Special Court remanded this case [AB-167 (Sub-No. 493N)] to the Commission to allow interested parties to comment and present evidence on West Side's offer. The Commission reopened the proceeding on October 1, 1985, and has established a procedural schedule. It has since (on November 5, December 13, and December 19, 1985, and January 9, 1986) issued a number of decisions addressing procedural disputes occurring among the parties. The record is still being developed.

CONRAIL TRAFFIC DIVERSION STUDY

Mr. **Coughlin**. Last August, the Commission's staff prepared a report at the request of the House Energy and Commerce Committee on freight traffic diversion that could result from a Norfolk Southern/Conrail merger.

That report found that Norfolk Southern significantly underestimated the amount of freight revenue that would be lost to ten other railroads through diversions. The ICC staff estimated total diversions to be between $289 million and $320 million in annual freight revenues.

The FRA subsequently issued a press release saying the ICC study was "flawed", and that the diversions would only be between $185 million and $264 million. That is 20 to 55 percent lower than the Commission's staff estimates.

Do you have any idea of who was right? Do you agree that the Commission's staff work was flawed?

Mrs. **Gradison**. Let me preface this by saying that these staff members were assigned to the House Committee. The members of the Interstate Commerce Commission never saw the study. As a result, I really cannot express an opinion on their study.

The Conrail sale is not a proposal that is before the ICC, and therefore, any questions about that study probably ought to be addressed to the folks that headed it up on Congressman Florio's staff.

Mr. **Coughlin**. Were the staff members that were sent over there experts in the area? I mean, were they competent to do this kind of study?

Mrs. **Gradison**. I am sure that they were.

Mr. **Coughlin**. They had some expertise?

Mrs. **Gradison**. You know, I did not play a role in this at all, but yes, indeed, they do have expertise in rail issues, and I am sure that they did a fine job for the House Committee.

But I do not know the methodology that was used, and, therefore, I am not in a position to make a judgment of the product that they provided.

CONFLICT OF INTEREST

Mr. **Lehman**. As a former employee of Norfolk Southern, is that an objective statement?

Mrs. **Gradison**. Let me make that clear: It was the Southern Railway for whom I worked, not the Norfolk Southern. I really kept my distance from this one, and I have not reviewed any of the aspects related to the Conrail sale, frankly, with the anticipation that in the event it were to be sent to the ICC, I want to be in a position to provide an unbiased response, though I am not advocating that that happen.

Mr. **Lehman**. Can you get your old job back?

Mrs. **Gradison**. They moved.

Mr. **Coughlin**. Would you be in a position to recuse yourself in consideration of a Conrail sale?

Mrs. **Gradison**. No, I would not. I do not have any financial or personal relationship with the Norfolk Southern Railway. I do not have any relationship with Conrail, and in the event it were to be referred to the Interstate Commerce Commission, which again, I am not advocating, I would not recuse myself unless I were to find grounds upon that reference.

CONRAIL TRAFFIC DIVERSION STUDY

Mr. **Coughlin**. Please expand on your answer for the record, citing any relevant statistical data.

[The information follows:]

Last August, at the request of Chairman Florio, the Commission detailed certain individuals to the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce to assist the Subcommittee in analyzing certain matters related to the sale of Conrail to the Norfolk Southern Railroad. The Commission had no role in the management of the study, guidance for what was to be accomplished by the study or the final report for the Subcommittee. The Commission does not have a role in the disposition of the Conrail sale and has not considered or reviewed Chairman Florio's staff report. Therefore we are not in a position to assess the conclusions of the study.

SANTA FE-SOUTHERN PACIFIC MERGER

Mr. **Coughlin**. With regard to the Santa Fe-Southern Pacific merger, I believe the Justice Department and Transportation Department have filed opposing briefs with the Commission.

Would you briefly summarize each department's position and give us a status report on your deliberations?

Mrs. **Gradison**. May I provide that for the record?

Mr. **Coughlin**. Yes. That is a "big" question.

[The information follows:]

The Department of Justice opposes the proposed merger, stating that "the merger would have a serious adverse effect on competition for the transportation of numerous commodities, particularly in the West, Southwest, Midwest and Southeast." DOJ alleges that applicants have not shown significant efficiencies that would outweigh the competitive harms or that could not be achieved by means other than a merger. The Department denies that the financial condition of either carrier justifies the merger in light of its anticompetitive effects, which the Department states cannot be remedied either by proposed conditions or by any other "identifiable" means. DOJ states that the proposal presents a "parallel merger of a scope unprecedented in recent years."

The Department of Transportation urges the Commission to find that the merger of SF and SP would be in the public interest and would be consistent with the National Transportation Policy and the applicable statutory standards and should be approved by the Commission, subject to the condition that the identified reductions in competition be ameliorated. It offers a three-part approach to do so: (1) identify competitive problem areas; (2) allow the applicants, through negotiation with potential new entrants, to determine the solutions to the problem identified; and (3) review the effectiveness of the proposed solutions.

The DOT argues that the Commission must balance the harmful effects of the merger against the public benefits which will be produced. Benefits it asserts include: (1) an annual recurring savings, valued at $218 million per annum; (2) a net one-time savings of $522 million; (3) improved operating efficiencies, including better transit times, more reliable service, better equipment supply, reduction of loss and damage, greater responsiveness to market changes, greater availability of "one-stop shopping," and increased single line service.

The record remains open. We are now holding further hearings on the recently-submitted Burlington Northern-Santa Fe/Southern Pacific traffic agreement, claimed to eliminate the allegedly anticompetitive aspects of the proposal raised by other parties. The record should close by mid-March. We then have 180 days to issue a final decision.

RAILROAD MERGER TREND

Mr. **Coughlin**. I believe the Chairman of the House authorizing subcommittee on rail matters has expressed concern about the merger trend of the last few years. We may soon have as few as six major railroads. He reportedly indicated that this concentration of control and reduced level of competition requires a re-examination of the Staggers Act.

Are you concerned that the railroad merger trend may have gone too far, and that market power has become too concentrated?

Mrs. **Gradison**. Well, the Staggers Act anticipated mergers. We have a system in place to provide for review of those mergers.

The major merger activity seems to be slowing. We have before us only the Santa Fe-Southern Pacific proceeding, and in any event, merger activity per se does not adversely affect competition.

In mergers we approve we can impose conditions, if they are required, and in addition, captive rail shippers continue to be protected through other provisions of the statute.

Intramodal competition is only a small piece of the competitive environment and it has been estimated that over 80 percent of rail traffic is highly motor-competitive. So that means that you are only talking about 20 percent of the traffic that the railroads move being subject to potential monopoly position anyway, and I think that the Staggers Act really does provide the appropriate umbrella for review of mergers, and I do not think we have seen too many so far.

That is not to prejudge the Santa Fe-Southern Pacific merger in any way.

UNIFORM RAIL COSTING SYSTEM

Mr. **Coughlin**. Please update us on the status of the Railroad Accounting Principles Board's review of the uniform rail costing system, and also provide a timetable for implementation.

[The information follows:]

On January 31, 1986, the Board released a Discussion Memorandum entitled, "Issues and Questions on Railroad Accounting and Cost." This document solicits public comment on alternative approaches for establishing principles for particular railroad regulatory proceedings. This includes principles which should underlie a costing system such as the uniform railroad costing system. The Board expects to issue its final principles and report to Congress in January 1987.

Mr. **Coughlin**. Let me yield back to the Chairman.

QUESTIONS SUBMITTED BY HON. CARL D. PURSELL

Mr. **Lehman**. Thank you, Mr. Coughlin. Mr. Pursell had some questions for the record, that he asked to have entered.

BOXCAR DEREGULATION

Mr. **Pursell**. Will you verify for the record that the Commission will be issuing a final decision in the boxcar controversy by April 21st as you indicated to Senator Gorton at last Friday's oversight hearings on the Staggers Act.

[The information follows:]

On November 29, 1985 a notice of proposed rulemaking was served in Ex Parte No. 346 (Sub-No. 19), *Boxcar Car Hire and Car Service*, to make comments, among other matters, on a joint proposal submitted by the Consolidated Rail Corporation, Brae Corporation, Itel Rail Corporation, and the American Short Line Railroad Association. Comments were filed by February 3, 1986. The comments indicate that not all parties support the proposed agreement and that other proposals are offered for consideration. The Commission staff is currently reviewing the comments and preparing an options paper for Commission consideration in mid-April. A mid-April Commission voting conference could be used to decide the case. I indicated to Senator Gorton that we would try to have a decision in two months. I did not nor can I confirm a specific date for the rendering of the final decision.

BOXCAR COMPROMISE PROPOSAL

Mr. **Pursell**. The key parties to the boxcar debate submitted a compromise proposal a year ago. Why has not the Commission acted to end a controversy which has been draining the resources of the rail industry, the Commission, and Congress, for almost five years?

[The information follows:]

The Commission has not delayed resolution of the Ex Parte No. 346 (Sub-No. 19) proceeding. The Advance Notice of Proposed Rulemaking was served June 27, 1984 and comment was invited. Following the first round of comments, several parties asked to supplement the record in response to various suggestions made by other commentors. Those follow-up comments—which were necessary for a complete record—were received through September of last year. During this process, the Conrail/Brae/Itel/American Short Line Railroad Association agreement was submitted. It is only one of a number of proposals recommended to the Commission. Nevertheless, we recognized that it represented "significant agreement among those parties who have been primarily concerned" and we sought additional comment on it. If we are to change our rules, and adopt any of these proposals, we must follow these notice and comment procedures or violate the Administrative Procedure Act.

The record is now closed, yet there is little agreement among the parties regarding what should be done, and a number of very different proposals have been submitted for our consideration. I expect a decision in the Spring.

BOXCAR DECISION

Mr. **Pursell**. The boxcar controversy has been before the Commission for nearly five years and before you as a member of that Commission for nearly four years.

The courts and Congress have repeatedly directed the Commission to address the problems of small railroads.

Will further legislation be necessary to direct the Commission to address this problem?

[The information follows:]

Further legislation is not necessary. The Commission is addressing the small railroad issue in two boxcar-related proceedings. In Ex Parte No. 346 (Sub-No. 8), the

Commission voted in an open conference on December 11, 1985, to provide special protection for Class III railroads in connection with their rate relations with larger railroad connections. In Ex Parte No. 346 (Sub-No. 19), the Commission is now studying the car hire issue, including the agreement recently submitted by Conrail, Brae, Itel, and the Short Line Railroad Association. I expect a decision in the Spring.

Mr. **Pursell**. There are rumors that the Commission may again, as it did in June of 1984, delay action on the boxcar issue by moving the boxcar issue into another proceeding.

Can we have your assurance that the Commission is not going to change the numbers again and return to the starting gate?

[The information follows:]

You have my assurance that the Commission will decide the boxcar car hire issue in Ex Parte No. 346 (Sub-No. 19) this Spring.

BOXCAR AGREEMENT AUTHORITY

Mr. **Pursell**. Do you believe you have the legal authority to adopt these protections?

[The information follows:]

Whether we have the legal authority to adopt the Conrail/Brae/Itel/American Short Line Railroad Association agreement is disputed in the record in Ex Parte No. 346 (Sub-No. 19). DOT is one of the parties suggesting we do not. As staff is still working on this issue, I cannot now state categorically that we do or do not. It is also generally agreed that the proposal raises serious policy questions, and it is opposed by a substantial number of railroads, many of which offer alternative ways of resolving the problem.

Despite the complexity of the issues and the number of different proposals now before us, I am committed to reaching a decision this Spring.

JUSTIFICATIONS

REPROGRAMMING REQUEST

Mr. **Lehman**. On to the justifications. Along with your budget justifications, you transmitted a reprogramming request changing staffing levels for several of your offices. We will place a copy of that letter in the record at this point.

[The letter follows:]

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

February 5, 1986

Honorable Jamie L. Whitten
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are the FY 1987 budget estimates for the Interstate Commerce Commission, under current legislation. In addition, I am requesting reprogramming actions for FY 1986.

The Conference Report accompanying the FY 1986 Continuing Resolution, P.L. 99-190, provided specific staff-year and funding levels to each major office of the Interstate Commerce Commission. Provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) require sequestering some current-year funds, resulting in a reduction of obligations and staff-years. Application of this reduction across the board to each office would create some funding imbalances and serious operational difficulties. Accordingly, with your approval, I intend to make the changes in funding and staff-year distributions explained below. These reprogramming actions reflect changes from the individual office levels after application of an across-the-board reduction of 4.3 percent to both the staff-years and the sequestrable funding base of $48.18 million. In several instances, reprogramming is being requested merely to bring the staff level for an individual office back to the level approved in the Conference Report.

As a whole, the agency is decreasing its projected use of staff-years by 43 (from 889 to 846), which is five more than the 38-staff-year reduction that is required by Gramm-Rudman-Hollings. This is possible because of the Commission's plans for reorganization and the continuing turnover in staff.

Resources for the Office of the Secretary will be increased by four staff-years, from 81 to 85. This will allow this office to fill critical vacancies and remain at the staff-year level approved in the Conference Report. The action is necessary for the office to keep up with its workload demands and to avoid the regulatory lag that would otherwise occur.

Resources for the General Counsel will be increased by one staff-year, from 26 to 27. This action will maintain staff-year usage at the level approved in the Conference Report and is necessary for the office to keep up with workload demands dictated by the courts.

In compliance with Congressional suggestions, the Office of Public Assistance will be created from the merger of the Office of Special Counsel, the Small Business Assistance Office, and the State/local liaison function. The merger will require reprogramming (by transfer) of seven staff-years, in addition to the seven staff-years allotted to the Office of Special Counsel. The reprogrammed staff-years are needed to accomplish the merger and to carry out the increased workload experienced in 1985 and 1986 by the Small Business Assistance Office.

The staff-year level of 30 provided for the Office of Transportation Analysis in the Conference Report is being reached as the result of a reduction in force which took place in the first quarter of FY 1986. A reprogramming of one staff-year (from 29 to 30) is requested to avoid a second reduction in force for this office during this fiscal year.

Offsetting reductions in staffing will be made in the Bureau of Accounts, the Bureau of Traffic, the Chairman's satellite offices, the Office of Proceedings, and the Office of the Managing Director.

The Bureau of Accounts will be reduced by five staff-years, from 96 to 91. The Commission recently approved a reorganization of the Bureau and the elimination of field audits by Bureau staff; this has resulted in significant attrition and reduced staff requirements.

The Bureau of Traffic will be reduced by two staff-years, from 77 to 75. Attrition and recent organizational changes resulting in efficiencies have allowed the elimination of some positions in the Bureau.

The Chairman's satellite offices will be reduced by six staff-years (from 21 to 15), in accordance with the transfer of the State/local liaison function and the Small Business Assistance Office to the new Office of Public Assistance.

The Office of Proceedings will be reduced by three staff-years, from 143 to 140. Some reductions in workload have occurred that will permit the Office to operate without filling all vacancies that occur through attrition.

The Office of the Managing Director has also experienced unexpected attrition and will reduce its staff-year usage from 84 to 82 by delaying the filling of critical vacancies during the year and by productivity improvements.

Adjustments in funding are required, because of funding imbalances between offices which have resulted from the combined effects of across-the-board spending reductions and the vagaries of attrition. The Commission will be able to use the five-percent flexibility provided in the Conference Report to overcome most of the funding imbalances. However, in some offices, the difference between the available funding and the anticipated requirement would exceed the five-percent limitation.

For instance, the Office of the Secretary will require an additional $492,000 to fund the staff-years and non-personnel costs associated with their regulatory support functions. The Bureau of Accounts and Bureau of Traffic will be reduced by $978,000 and $258,000, respectively. These bureaus have recently experienced reorganizations and steady attrition. In addition, increased efficiencies created in each office have resulted in a reduction in the requirements for both staffing and support costs.

Creation of the new Office of Public Assistance will require that $338,000 be added to the amount already available for the Office of Special Counsel. This addition of funds is necessary to cover the staff-years and support costs being transferred.

I am sending an identical request to Senate Appropriations Committee Chairman Mark O. Hatfield. It is my opinion that these reprogramming actions are in the best interest of the Commission. In the event I do not hear from you within 30 days, I will assume your concurrence with these actions and will proceed with implementation.

Sincerely yours,

Heather J. Gradison

Heather J. Gradison
Chairman

Enclosûres

cc: Chairman William Lehman

OFFICE OF PUBLIC ASSISTANCE

Mr. **Lehman**. The largest staffing change proposed is a doubling of the Special Counsel's staff, from 7 to 14, which will also be reorganized into a new Office of Public Assistance.

Will you explain the rationale behind this request?

Mrs. **Gradison**. As the size of the Commission diminishes the public's need for information regarding changes in the regulatory environment seems to increase.

Streamlining of the public assistance activities is necessary to ensure a smooth transition. Merger of the Office of Special Counsel and the Small Business Assistance Office into the new Office of Public Assistance will foster the most productive use of staff talents in varied areas of expertise.

Enhanced efficiencies in the functions now performed by these offices will prove beneficial to this Commission and to the public.

I am looking forward to that combination. I think it is going to be a good way of combining overhead while still providing that public outreach function, so it should be more efficient.

OFFICE OF SPECIAL COUNSEL FUNCTIONS

Mr. **Lehman**. Can you assure us that this new office will continue to perform the former functions of the Office of Special Counsel, and that such functions will be performed with the same degree of independence and expertise as was exhibited in the past?

Mrs. **Gradison**. Absolutely.

COMMISSIONERS AND THEIR OFFICES

Mr. **Lehman**. Do you plan any staff-year changes to the Appropriations conferees' allocation for your immediate office, or for the Commissioners' immediate offices?

Mrs. **Gradison**. No, we do not. The question was to verify absolutely, that we are not changing or bucking up our own staffs behind the door, and clearly, we are not.

ELIMINATION OF FIELD AUDITS

Mr. **Lehman**. You mention in your reprogramming letter that the Commission had approved the elimination of field audits by the Bureau of Accounts. Would you explain the rationale for this?

Mrs. **Gradison**. Okay. I would like to turn to Ron Young. He is the Director of Accounts, and I think he can best address this.

Mr. **Young**. Yes, sir. I proposed to eliminate the field audit staff because of the impact that the lessening of government involvement in the private sector was having on the Commission.

We were having a great deal of difficulty. We were losing people, and we were not able to replace them because they just did not want to come to work for the ICC.

And it seemed to me like we still had to provide for the integrity of the data that we were getting in the annual reports to the Commission, in some other fashion. So, I proposed that we eliminate the field audit staff and have the independent public accountants who were doing the independent audits for the Class I railroads, extend or expand the scope of that audit to embrace the type of auditing that we did.

Now that was an incremental cost to the railroads, but it saved the Commission approximately $1.2 million in terms of current day dollars, per year.

We will still have, in my opinion, adequate oversight. We have retained a sufficient number of people at headquarters who are audit managers, who are CPA's, who will work with the independent public accountants to review their work, and the independent public accountants will be performing their work based upon agreed-upon procedures with us.

In other words, we will determine what they have to do, and we will be sure that they have done it, and they will, in effect, be doing what our auditors did, and they will be supplying us with an independent opinion.

I feel totally comfortable that we will be getting the same quality of work as we had gotten with our own auditors.

Mrs. GRADISON. Thank you, Ron.

Mr. LEHMAN. And the Commission will not be paying for these audits that are done by independent auditors?

Mr. YOUNG. No, sir. This is a savings.

OFFICE OF THE MANAGING DIRECTOR

Mr. LEHMAN. Would you explain the "productivity improvements" made in the managing director's office that allowed you to reduce staffing from 88 in the conference report to 82?

[The information follows:]

The Managing Director's office is improving productivity by changing procedures or systems, as well as by crosstraining employees and combining similar functions. Processes are being redesigned better to serve our needs and to reduce the labor required to accomplish similar kinds or levels of activity. Where crosstraining is possible for administrative and technical employees, elimination of some jobs as they become vacant is being accomplished. In addition, some workload reductions associated with support to certain program areas have resulted in staff savings.

GRAMM-RUDMAN IMPACT ON FISCAL YEAR 1987

Mr. LEHMAN. The Gramm-Rudman amendment, assuming it is upheld in court, will require a very large across-the-board reduction on October 1 if Congress does not come up with a viable alternative budget. And since the President's budget closely resembles last year's proposal that was soundly rejected, such across-the-board cuts cannot be dismissed lightly.

What would happen to the Commission if it were forced to absorb a 15 to 20 percent reduction next year?

What functions would you drop, assuming you are still in business?

Mrs. GRADISON. Let's go ahead and make the assumption, that we are in business, and if we see a sequestration of 15 to 20 percent of the Commission's funds, the question is how would we function?

We are attempting to address that right now because we have been caught short by not anticipating what we would do with fewer dollars in the past, and we do not want to have that happen to our employees again.

So we are trying to put the tools in place today to anticipate that.

So how would we function with two-thirds less staff? We would not be able to timely meet all of our statutory responsibilities. How does an agency make the determination of which parts of the statute they are going to be timely complied.

Mr. **Lehman**. Excuse me. You said two-thirds less staff?

Mrs. **Gradison**. I am sorry. One-third less. How do we function with two-thirds of our current staff? And we would have to make a determination of which parts of the statute to enforce, and which parts not.

My proposal to the Commission would be that we would reduce our economic regulation of motor carriers, similar to what the Administration's bill provides, and that we would maintain our rail functions to the best of our ability.

Obviously we would be in contempt of Congress by not timely performing all of our statutory functions, but we just have to do the best that we can with the dollars that you give us, and we do anticipate this happening, so we will be making moves now, to be prepared for exactly that taking place.

GRAMM-RUDMAN IMPACT

Mr. **Lehman**. Instead of absorbing a 15 to 20 percent funding reduction, would you concur in the idea of simply transferring all of the Commission's functions and remaining resources to the Departments of Transportation and Justice, and to the FTC?

Could it not be argued that they could more efficiently perform the Commission's functions at that reduced funding level, since they are larger organizations?

[The information follows:]

No, we would not concur in simply transferring the Commission's present functions and resources to other agencies. If no further motor carrier transportation legislation is passed this year, we are urging the Congress to act on the Commission's $48.3 million request under current legislation. While some may argue that larger agencies could capitalize on "economies of scale" to reduce funding requirements, experience has shown that this does not always prove to be the case. Furthermore, we believe that much would be lost by eliminating the ICC in advance of motor carrier deregulation. For instance, the shipping public would no longer have a single entity to deal with in the regulation of interstate surface transportation. In addition, many of the current ICC employees have a wealth of accumulated knowledge and skills which can be used interchangeably on rail and motor matters. This would not occur if functions and staff were divided and transferred on a modal basis; valuable expertise would be lost.

We can assure you that, as we continue to find ways to streamline procedures and as workload declines, additional resource savings will be made at the ICC. And we see little to be gained and much to be lost in the piecemeal transference of our present statutory responsibilities.

RAIL RESOURCES

Mr. **Lehman**. On page 4 of the justifications you indicate that $18.746 million will be required for your rail functions in fiscal year 1987.

The Department of Transportation recently testified that they will require only $8 million to $10 million to continue these functions at the Departments of Transportation and Justice if their sunset legislation is approved.

Why do you require 90 to 100 percent more funds to operate these functions than the other two Departments would require?

Mrs. **Gradison**. Congressman Lehman, unfortunately, we have not yet seen the bill, but the preliminary indications show that the DOT and DOJ may in fact be understaffed, and we will certainly play a role in making recommendations for the appropriate staff levels, but we simply cannot perform the functions that are on the books today, with the numbers that are before us for the DOT and the DOJ, so we will be making recommendations to them.

Mr. **Lehman**. Apparently you think that the estimates of DOT are too low?

Mrs. **Gradison**. Yes, sir. But you know, we have not seen their bill, so it is not clear what functions that they would truly want to keep, and if those functions are different from what we are currently providing, it may be that they have provided the appropriate staff levels. But from what we know at this time we could not provide the functions we provide ourselves, with that number of people.

Mr. **Lehman**. Please expand on your answer for the record.

[The information follows:]

Since the ICC was not involved in developing the DOT estimate, I believe that Secretary Dole and Attorney General Meese could best tell you how they plan to perform these rail responsibilities with significantly fewer resources. However, these are the facts of the Administration's proposal as I understand them:

	Staff years	Million
DOT	155	$7.8
DOJ	68	3.4
Total	233	11.2

The ICC budget request for the rail program is: 292 staff-years—$18.7 million.

So, to begin with, there is a difference of 69 staff-years and the funds to pay those employees. Frankly, I am puzzled as to how these complex rail functions could be performed with significantly fewer staff or lower funding. It is difficult to believe that "economies of scale" could account for a savings of this magnitude, since the salary and benefit costs of those rail functions will average $50,000 per staff-year in FY 1987. Because the proposal is supposed to transfer current ICC staff, we can only conclude that the estimates for DOT and DOJ erroneously omitted any non-personnel cost (i.e., office space, telephone, utilities, research or service contracts, supplies, furniture or equipment, and so on).

ICC SUNSET AND RAIL FUNCTION SCOPE

Mr. **Lehman**. To your knowledge, does the Department of Transportation plan on reducing the scope of some of these transferred rail functions?

[The information follows:]

Since we have not seen the Department of Transportation's proposal for transfer of ICC functions, we do not know whether they plan to modify the scope of the transferred rail functions.

Mr. **Lehman**. In your view, should the scope of some of your rail functions be reduced?

You say they were going to be reduced. I guess the question is, should they be reduced. If not, would you expect the Commission's staffing and resource levels for the rail area to level off in future years (assuming the Commission is still in existence)?

Mrs. **Gradison**. May I answer that one for the record?

[The information follows:]

I believe that rail regulation under current legislation is working well and should be continued without major changes to the scope of these functions. Our recent experience has been that rail workload demands have been decreasing at a less rapid rate than motor workload. Although we may modify procedures or rules which will somewhat change the character of the workload, the overall work demands will probably not decline significantly in the near future, despite our best efforts to eliminate unproductive or redundant activities. Therefore, for FY 1987 and beyond, our staffing and resource requirements for rail functions should remain relatively level.

STAFFING REDUCTION

Mr. **Lehman**. Overall, you are proposing about a 5.5 percent staffing reduction, from 846 to 800 staff years, assuming no change in current legislation.

Why are you proposing this reduction when, presumably, your legislated functions will not change?

Mrs. **Gradison**. The organizational changes that primarily affect the Bureau of Accounts, the Office of Compliance and Consumer Assistance, and the Chairman's satellite offices, make up a substantial portion of this reduction.

Reductions in workload levels and the expiration of two Commissioner seats during fiscal year 1986 also contribute to staff reductions.

STAFFING REDUCTIONS—OCCA AND ACCOUNTS

Mr. **Lehman**. The bulk of your proposed staffing reduction is in the Office of Compliance and Consumer Assistance (−11.4 percent) and the Bureau of Accounts (−17.6 percent).

Why are you proposing such deep cuts in these two offices?

Mrs. **Gradison**. Well, in response to recent regulatory changes and budget pressures, the Bureau of Accounts and OCCA will undergo significant organizational changes during fiscal year 1986.

And that should achieve large staff reductions from 1987. In the Bureau of Accounts, reducing the number of sections and changing the method for carrying out the audit program will reduce the staffing requirements.

Reductions in workload and in the number of field offices serve as the basis for our streamlined organizational structure for the Office of Compliance and Consumer Assistance.

Mr. **Lehman**. In this reorganization, do you think these people will be working at the same level of activity?

Mrs. **Gradison**. I think there will be more travel involved, for sure, but I think, frankly, that there will be better coordination.

When you have field offices in every State, it is a little more difficult to coordinate those activities, and when you reduce the number of field offices, you can pull them together and give them the instructions, and I think we should actually see an improvement in the quality and the consistency of the functions performed by those offices.

But I want to add that the office, OCCA, has really improved in the performance of their functions and we are pleased with the job that they are doing.

Mr. **Lehman**. Will there be certain areas that will not be covered, or will be eliminated?

Mrs. **Gradison**. We will be closing any number of field offices, and as the offices are closed, we will be advising the Congressional Member, whose district the office is in, as well as the Senators of that State, and although the number of offices will be reduced, I do not anticipate any reduction in the quality of the service available to the shipping public.

OFFICE OF PUBLIC ASSISTANCE STAFFING INCREASE

Mr. **Lehman**. Why do you actually propose an increase of one position in your public assistance office, from 14 to 15 positions?

[The information follows:]

The office has experienced a 30 percent increase in public inquiries because of staff reductions in other offices. To handle this increase the office has been forced to defer much needed revision of some of its instructional booklets—publications used by all offices to respond to general questions concerning agency regulations and procedures. The additional position, coupled with a reprogrammed position in FY 1986, will allow the office to respond to the present level of inquiries and to resume its publication activities.

STAFFING REDUCTIONS

Mr. **Lehman**. Do you plan to attain your proposed 46 staff year reduction solely by attrition, or will you have to do some RIFing?

Mrs. **Gradison**. Well, we are going to have to do some RIFing. It looks like the reorganization of field structure in OCCA and the Bureau of Accounts is expected to require a reduction in force during the last half of fiscal year 1986.

Since we cannot count on attrition to take place in all of the right places, it is not expected that further reductions in force will be required during 1987, and employees separated in 1986 will continue to receive severance payment in 1987.

REDUCTIONS IN FORCE

Mr. **Lehman**. Proportionally, how much of your reduction will be by RIF?

Mrs. **Gradison**. We do not know that at this time.

Mr. **Lehman**. How many people?

Mrs. **Gradison**. We do not know that at this time. It depends on the attrition, and it depends on how many people are willing to move.

Mr. **Lehman**. Perhaps you can put this into the record, if you have the data available.

Mrs. **Gradison**. Well, it is going to kind of be an "after the fact" event. We would be happy to let you know what our anticipated number of people would be to be RIFed, before they are RIFed.

Mr. **Lehman**. Anticipation is what I want for the record.

Mrs. **Gradison**. But we will not know that till we get there. We are going to try our best to keep it to a minimum.

Mr. **Lehman**. Well, give us an anticipation number.

Mrs. **Gradison**. Okay.

[The information follows:]

Normally, attrition would be sufficient to achieve an overall reduction of 46 staff-years between FY 1986 and 1987. However, because the reductions are based on reorganizations in the Bureau of Accounts and the field structure of the Office of Compliance and Consumer Assistance, it is estimated that between 20 and 30 persons may have to be involuntarily separated to achieve planned reductions in these areas. This range is very broad due to the uncertainty surrounding where attrition and retirements will occur and the willingness of field employees to relocate.

ATTRITION RATE

Mr. **Lehman**. What is your current attrition rate and what rate have you planned for in fiscal year 1987?

[The information follows:]

The Commission's actual attrition rate for the past 12 months (February 1985 to February 1986) was approximately 15 percent. This was a period which included a one day per week furlough for eight weeks and during which reductions-in-force were being implemented. In addition, a large number of retirements occurred during the period. Under the current, more stable funding and employment conditions, the Commission expects this rate to decrease to between 10 or 11 percent in FY 1986. This rate has also been assumed in developing budget plans for FY 1987.

ONBOARD EMPLOYMENT

Mr. **Lehman**. Please update the onboard employment table found on page 873 of last year's hearing record.

[The information follows:]

	Full-time permanent positions	Other than full-time permanent positions	End of period total
Fiscal year 1983:			
1st quarter	1,326	33	1,359
2nd quarter	1,295	25	1,320
3rd quarter	1,240	37	1,277
4th quarter	1,201	47	1,248
Fiscal year 1984:			
1st quarter	1,163	42	1,205
2nd quarter	1,141	40	1,181
3rd quarter	1,092	43	1,135
4th quarter	1,023	48	1,071
Fiscal year 1985:			
1st quarter	956	51	1,007
2nd quarter	905	44	949
3rd quarter	864	30	894
4th quarter	834	25	859
Fiscal year 1986:			
1st quarter	787	40	827
2nd quarter (through February 15, 1986)	785	40	825

PERSONNEL COMPENSATION AND BENEFITS

Mr. **Lehman**. Please also update the personnel compensation and benefits table found on page 874 of last year's hearing record by adding a 1987 column. You may drop the 1981 column.

[The information follows:]

PERSONNEL COMPENSATION AND BENEFITS

	Fiscal year					
	1982	1983	1984	1985	1986	1987
Permanent positions	$45,717,000	$42,380,000	$38,909,000	$33,602,000	$31,036,000	$31,369,000
Terminal leave	329,000	380,000	404,000	388,000	300,000	300,000
Special appointments	465,000	378,000	582,000	625,000	1,086,000	424,000
Overtime	77,000	77,000	95,000	49,000	85,000	85,000
Night differential	9,000	9,000	12,000	7,000	9,000	9,000
Incentive awards	3,000	137,000	176,000	76,000	274,000	247,000
Total compensation	46,600,000	43,361,000	40,178,000	34,747,000	32,790,000	32,434,000
Staff-year level	1,567	1,305	1,158	916	846	800
Average personnel compensation per staff-year	$29,738	$33,227	$34,696	$37,933	$38,759	$40,543
Total benefits [1]	4,853,000	5,517,000	4,928,000	4,523,000	4,249,000	4,370,000

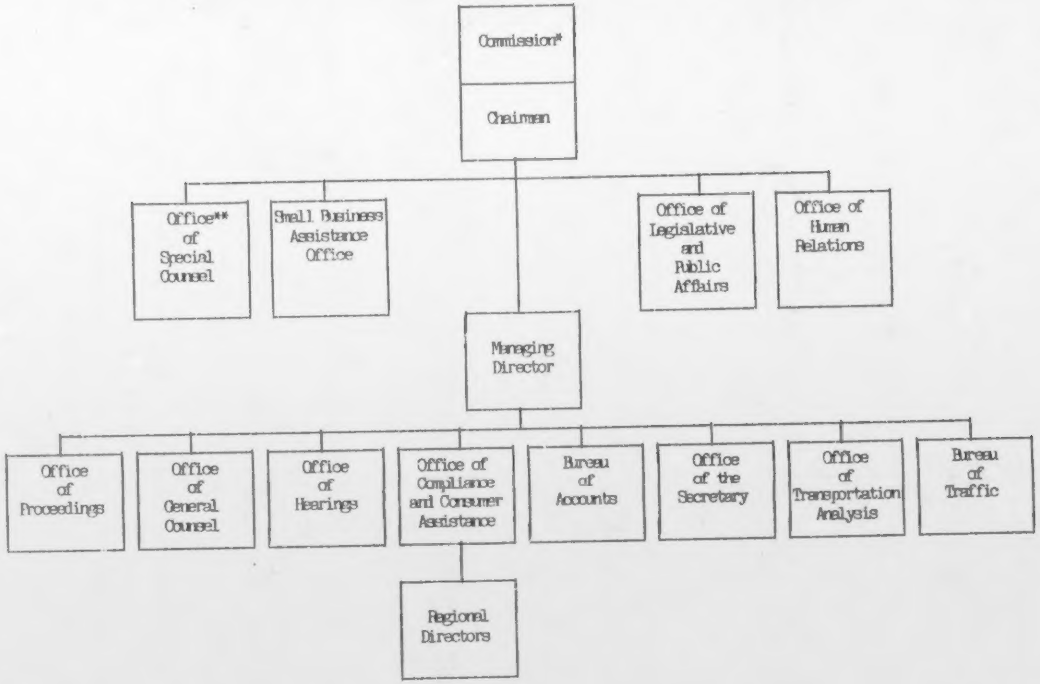
[1] Includes severance pay and unemployment compensation for former personnel.

ORGANIZATION

Mr. LEHMAN. Please also provide for the record a copy of your current organization chart.

[The information follows:]

INTERSTATE COMMERCE COMMISSION


Commission*
Chairman
Office** of Special Counsel
Small Business Assistance Office
Office of Legislative and Public Affairs
Office of Human Relations
Managing Director
Office of Proceedings
Office of General Counsel
Office of Hearings
Office of Compliance and Consumer Assistance
Bureau of Accounts
Office of the Secretary
Office of Transportation Analysis
Bureau of Traffic
Regional Directors

As of March 3, 1986

* In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rulemakings and significant adjudications are decided by the entire Commission.

** Subject to administative supervision of the Chairman, but in all other respects is accountable to Commission. A new Office of Public Assistance will be created by FY 1987 from the merger of this office and the Small Business Assistance Office.

OVERSEAS TRAVEL

Mr. **Lehman**. Please also provide for the record a listing of any official overseas travel that was conducted in fiscal years 1985 and 1986 to date, including where, why, who, and how much was spent.

[The information follows:]

There was no official overseas travel in fiscal years 1985 and 1986 to date.

COMMISSIONERS AND THEIR OFFICES

Mr. **Lehman**. Please update us on the status of the Commissioner seats and terms, similar to what appears on page 870 of last year's hearing record.

[The information follows:]

Commissioners and Expiration of Term

Malcolm M.B. Sterrett, December 31, 1987.
Frederic N. Andre, December 31, 1987.
Heather J. Gradison, December 31, 1988.
Paul H. Lamboley, December 31, 1984.[1]
J.J. Simmons III, December 31, 1985.[1]

---

[1] Commissioners Lamboley and Simmons are serving in these expired terms. Both have been renominated. Upon confirmation, Commissioner Lamboley's new term will expire December 31, 1989; Vice Chairman Simmons' new term will expire December 31, 1990.

COMMISSIONER STAFFING

Mr. **Lehman**. Last year, the Appropriations conferees spent quite a bit of time discussing the appropriate staffing levels for the Commissioners' immediate offices.

Would you tell us how many staff are presently assigned to each Commissioner, and what staffing levels you have budgeted for fiscal year 1987?

Mrs. **Gradison**. Okay. Going down the line, from my office, I am authorized to have seven; I currently have six. Vice Chairman Simmons is authorized six and has six. Commissioner Andre is authorized six and has 5.4. One of his people is on a couple of days a week rather than full-time; that is how you get part of a person.

Commissioner Sterrett is authorized six and he has four on board. I took some of his staff people, who are now in management positions at the Agency.

And Commissioner Lamboley is authorized six and he currently has five people working for him.

COMMISSIONER STAFF

Mr. **Lehman**. Please provide for the record the name, grade, and position of each staff member presently assigned to each Commissioner's office.

[The information follows:]

Name	Grade	Position
Office of Chairman Gradison:		
David M. Konschnik	GM-15	Attorney advisor.
Edward J. O'Meara	GM-15	Attorney advisor.
John F. Hennigan, Jr	GM-15	Staff advisor.

Name	Grade	Position
Hildred I. Smith	GS-12	Confidential assistant.
Linda D. Corsnitz	GS-9	Secretary.
Office of Vice Chairman Simmons:		
Van A. Bosco	GM-15	Attorney advisor.
Ricky L. Crawford	GM-15	Attorney advisor.
Thomas T. Vining	GM-15	Attorney advisor.
Hazel M. Lowe	GS-11	Confidential assistant.
Rebecca W. Powell	GS-7	Secretary.
Office of Commissioner Sterrett:		
John G. Arlington	GM-15	Attorney advisor.
Kathleen D. Ribaudo	GM-15	Attorney advisor.
Maria T. Foti	GS-11	Confidential assistant.
Office of Commissioner Andre:		
Daniel D. Campbell [1]	GM-15	Attorney advisor.
Maynard Dixon	GM-15	Attorney advisor.
Christopher C. Barnekov [2]	GM-15	Staff advisor.
Elaine R. Burkhardt	GS-11	Confidential assistant.
Mavis A. Wiggert	GS-8	Secretary.
Office of Commissioner Lamboley:		
Mary Kelly	ES-2	Attorney advisor.
Lillian A. Bateman	GM-14	Attorney advisor.
Lucy A. Aloi	GS-11	Confidential assistant.
Lorelei W. Ransome	GS-9	Secretary.

[1] Assigned to General Counsel's Office effective 3/2/86.

[2] Indicates part-time employee.

COMMISSIONER STAFFING PROJECTED

Mr. LEHMAN. Please also provide for the record a listing of projected fiscal year 1987 staffing similar to what appears on page 879 of last year's hearing record.

[The information follows:]

FISCAL YEAR 1987

[Projected]

	Chairman	Vice Chairman	Commissioner	Commissioner	Commissioner
Commissioner, EX-0	1	1	1	1	1
Chief of Staff, ES-301	1				
Attorney advisor, GM-15	2	3	2	2	3
Staff advisor, GM-15	1		1	1	
Confidential assistant, GS-12	1				
Confidential assistant, GS-11		1	1	1	1
Serectary, GS-9	1				
Secretary, GS-8		1	1	1	1
Totals	7	6	6	6	6

SATELLITE OFFICE STAFFING

Mr. LEHMAN. Please also provide for the record an updated staffing table of the satellite offices similar to what appears on pages 880 through 882 of last year's hearing record.

[The information follows:]

Position title and grade	Fiscal year— End-of-year 1985	Projected 1986	Projected 1987
Office of Human Relations:			
Assistant to the Chairman (ES-905)	1	1	1
Equal Empl. Manager (GM-14, GM-13)	2	2	2
Equal Opportunity Asst. (GS-6/7)	1	1	2
Total	4	4	5
Office of Legislative and Public Affairs: [1]			
Director (ES-905)	1	1	1
Attorney or Staff Advisor (GM-15)	3	3	3
Supv. Public Affairs Spec. (GM-15)	1		
Public Affairs Spec. (GM-14, GM-13)	2	2	2
Paralegal Specialist (GS-12/13)	1	1	1
Governmental Affairs Asst. (GS-8/9)	2	2	2
Secretary (GS-7)	2	2	2
Total	12	11	11
Small Business Assistance Office: [2]			
Attorney Advisor (GM-15, GM-14)	3		
Program Analyst (GS-13)	1		
Paralegal Specialist (GS-7)	1		
Total	5		

[1] Effective February 14, 1986, the former Office of Public Affairs and the former Office of Legislation and Governmental Affairs were consolidated into the new Office of Legislative and Public Affairs.

[2] During Fiscal Year 1986 a new Office of Public Assistance will be created from the merger of the Office of Special Counsel and the Small Business Assistance Office.

OTHER EXPENSES

Mr. LEHMAN. Please also provide for the record a breakdown of fiscal year 1985, 1986 and 1987 "other expenses" for the Commissioners and their offices.

[The information follows:]

[In thousands of dollars]

Other expenses	Fiscal year— 1985	1986	1987
Rental payments to GSA	609	466	461
Communications and utilities	45	38	38
Printing and reproduction	1	1	1
Other services	6	5	5
Supplies and materials	23	19	19
Furniture and equipment	6	0	0
Total	690	529	524

OFFICE OF THE SECRETARY

Mr. LEHMAN. Please provide for the record a schedule of all Commission filing and user fees and actual or planned collections for fiscal years 1985, 1986 and 1987.

[The information follows:]

	Fiscal year—		
	1985	1986	1987
Registration & filing fees	$4,505,200	$4,750,000	$4,600,000
Fines, penalties & forfeitures	643,579	500,000	500,000
Charges for administrative services	49,233	50,000	50,000
Miscellaneous recoveries & refunds	2,169	3,000	3,000
Total	5,200,181	5,303,000	5,153,000

INSURANCE WORKLOAD

Mr. Lehman. On page 20, you show a constant workload for the processing of insurance records (assuming the 11,340 reported for fiscal year 1987 is a printing error). Do you have adequate resources in the Office of the Secretary to handle this insurance workload in a timely manner?

Mrs. Gradison. Let me say that the Secretary's office is really taxed by this insurance crisis. It has been internally restructured, among other things, to provide for a total of eight staff years for this activity.

It should provide adequate resources to handle the insurance recordkeeping function in an efficient and effective manner.

Mr. Lehman. Do you expect it to level off, increase, or what, for 1987?

Mrs. Gradison. The insurance problem?

Mr. Lehman. Yes.

Mrs. Gradison. This is just my own judgment but I am afraid it is going to get worse before it gets better.

RESOURCE REQUIREMENTS

Mr. Lehman. Thank you.

Why does your annual projection of "issued notices/decisions" for the Office of the Secretary drop by two-thirds between fiscal years 1986 and 1987, and how does this affect your overall resource requirements for this office?

[The information follows:]

There is a printing error in the workload projection for Issued Notices/Decisions for FY 1987 which appears on page 20. That figure should have been 30,450, the same as the FY 1986 figure.

OFFICE OF HEARINGS

Mr. Lehman. You are proposing a staffing level of only six for the Office of Hearings due to a decreased workload. This is a 94-percent decrease from the level immediately prior to enactment of deregulation legislation.

Is there really a need to retain this office? Could not the functions be merged with another office, such as Proceedings, to make some administrative cost savings?

Mrs. Gradison. We really need to have an independent Office of Hearings. The trial work of the Office of Hearings is conducted, as our Chief Judge Allard refers to it, "in a fishbowl," and he feels that combining the discovery and the hearing process with appellate or policy functions of another office of the Commission, would probably impair their objectivity as hearing officers.

But also, let me state, that there are no cost advantages, or no managerial gains that would be produced by reducing the independence of the Office of Hearings, and the Chief Administrative Law Judge can designate our judges to other places within the Federal government for which the ICC is not charged.

If we send an ALJ to another agency, then they pick up the costs of carrying that ALJ, and in the meantime, the Commission is able to preserve its ALJ system which I feel is important to have. And let me also state, that in the event that the ICC rail functions were to be transferred to the DOT, they also have a set of administrative law judges who would be pressed into place, if that were to happen.

OFFICE OF TRANSPORTATION ANALYSIS CONTRACTS

Mr. **Lehman**. Why are you requesting a 20 percent increase in Office of Transportation Analysis contracts, from $258,000 to $310,000, when most of the workload measures reported on page 46 are decreasing or are being held constant?

Mrs. **Gradison**. Well, one of the problems is that the billing rates for the consulting firms that we use have gone up. In general, the additional funds will be used to engage those consultants to supplement the office's analytical capability for a variety of economic and environmental purposes.

And typically, these contractors work closely with staff members to develop or analyze data, or to assist in developing documentation, and such assistance seems to be necessary because of the small staff we have in the office, and the way we justify it is by keeping the smaller staff at the Commission, and then we do contract out that additional information factfinding from independent consultants. It seems to be a cost-effective manner to provide the high level of analytical skills that we need.

Mr. **Lehman**. Please provide for the record a breakdown of fiscal years 1985, 1986 and 1987 contract costs for the Office of Transportation Analysis similar to that found on page 898 of last year's hearing record.

[The information follows:]

OFFICE OF TRANSPORTATION ANALYSIS CONTRACT COSTS

	Fiscal year—		
	1985 [1] (actual)	1986 (projected)	1987 (projected)
Monitoring Rail Services Exemption		$35,000	$40,000
Rail Waybill Sample	$155,000	75,000	75,000
Bus Industry Studies		24,000	25,000
Computer Information Services		4,000	
Contract Rate Summary Data Entry		5,000	5,000
Supplemental Environmental Services	10,000	95,000	130,000
Supplemental Research and Analysis Expertise		20,000	35,000
Total	165,000	258,000	310,000

[1] Fiscal year 1985 expenditures were below needed levels due to severe budget constraints.

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. **Lehman**. On page 63, a substantial reorganization of the Office of Compliance and Consumer Assistance is described, in which the number of field offices is reduced from 49 to 19.

Will not this consolidation take your field staff further away from the industry they are supposed to be overseeing? You have partly answered that question, but I just want you to reiterate your reassurance.

Mrs. **Gradison**. Yes, and the answer is, really, we think they are going to be more effective in doing the job that they need to do because there will be better coordination among the field offices than we have had in the past, and it should be an easier number to manage.

Mr. **Lehman**. You have already notified the various Congressional offices, and so forth?

Mrs. **Gradison**. Well, we are in the process of doing that, and as we reach an agreement with the GSA for the termination of the leases, and so on, and the transfer of the individuals, as we do reach that step in the process we do notify the appropriate Members of Congress.

Mr. **Lehman**. I would suggest that you have a meeting yourself with Mr. Conte because I know he is quite concerned about the Boston office.

Mrs. **Gradison**. Yes, sir.

OCCA REORGANIZATION DATA

Mr. **Lehman**. Please provide for the record an office-by-office breakdown showing location, staffing, and cost before and after this Office of Compliance and Consumer Assistance reorganization.

[The information follows:]

For the purposes of the following comparison, the total FY 1987 operating cost of each office continuing in operation after the OCCA field reorganization is implemented is compared to the cost that would be incurred in FY 1987 to operate each office assuming the field reorganization were not implemented. Total costs presented below include salaries, benefits, travel, office space, communications, copiers and maintenance expenses as well as a pro rata share of other expenses. One-time costs attributable to the reorganization are not included in this comparison.

The staff levels indicated in the table represent the total number of full-time, temporary and part-time employees for each office.

	OCCA FIELD STRUCTURE BEFORE REORGANIZATION		OCCA FIELD STRUCTURE AFTER REORGANIZATION	
Location	Staff	Total Cost	Staff	Total Cost
BOSTON, MA	15	$876,361	12	$725,806
SPRINGFIELD, MA	1	$43,764		$0
HARTFORD, CT	1	$53,807		$0
PORTLAND, ME	1	$50,580		$0
CONCORD, NH	1	$53,916		$0
NEWARK, NJ	2	$129,562		$0
NEW YORK, NY	7	$423,303	10	$573,136
BUFFALO, NY	1	$52,123		$0
PROVIDENCE, RI	1	$44,152		$0
MONTPELIER, VT	1	$51,087		$0
PHILADELPHIA, PA	27	$1,371,439	27	$1,379,712
PITTSBURGH, PA	2	$120,354		$0
BALTIMORE, MD	3	$196,281	4	$251,120
CLEVELAND, OH	6	$279,794	5	$250,469
RICHMOND, VA	1	$51,962		$0
WHEELING, WV	2	$84,750		$0
ATLANTA, GA	24	$1,230,274	11	$607,426
BIRMINGHAM, AL	1	$57,450		$0
JACKSONVILLE, FL	2	$131,876	3	$193,431
MIAMI, FL	1	$56,555		$0
LOUISVILLE, KY	1	$55,381		$0
JACKSON, MS	1	$57,509		$0
CHARLOTTE, NC	1	$62,566	3	$171,606
COLUMBIA, SC	1	$71,521		$0
MEMPHIS, TN	2	$130,940		$0
NASHVILLE, TN	1	$58,716		$0
CHICAGO, IL	30	$1,649,396	30	$1,654,578
INDIANAPOLIS, IN	2	$75,979	3	$133,380
LANSING, MI	3	$140,715		$0
MINNEAPOLIS, MN	2	$117,254	4	$228,254
PIERRE, SD	1	$58,459		$0
FARGO, ND	1	$59,831		$0
MILWAUKEE, WS	1	$54,694		$0
FT WORTH, TX	21	$1,265,175	11	$701,470
HOUSTON, TX	2	$126,390		$0
LITTLE ROCK, AR	2	$120,446		$0
DES MOINES, IA	1	$57,703		$0
NEW ORLEANS, LA	1	$61,757	3	$183,358
KANSAS CITY, MO	2	$119,385	4	$240,011
ST LOUIS MO	3	$191,798	5	$308,720
OMAHA, NB	1	$61,374	3	$180,571
OKLAHOMA CITY, OK	1	$62,985		$0
SAN FRANCISCO, CA	15	$777,695	21	$1,082,283
LOS ANGELES, CA	7	$388,253	8	$442,114
ALBUQUERQUE, NM	1	$51,124		$0
ANCHORAGE, AK	1	$60,966		$0
BILLINGS, MT	1	$52,157		$0
BOISE, ID	1	$41,839		$0
CASPER, WY	1	$54,102		$0
CARSON CITY, NV	1	$56,311		$0
DENVER, CO	2	$117,074	4	$227,535
PHOENIX, AZ	1	$59,082	3	$162,920
PORTLAND, OR	1	$51,246		$0
SEATTLE, WA	2	$150,955	5	$303,021
SALT LAKE CITY, UT	1	$50,404	3	$157,237
TOTALS	216	$11,930,573	182	$10,158,160

OCCA WORKLOAD IMPACT OF MARKET STRATEGIES

Mr. **Lehman**. Please explain more fully the following statement made on page 64, and give us a sense of how this has affected the Office of Compliance and Consumer Assistance's workload.

"Many legitimate competitive market strategies employed by carriers today would have been subject to enforcement under previous regulatory requirements."

[The information follows:]

The statement referred principally to the pricing and service changes implemented by both rail and motor carriers in recent years. Rail pricing has changed largely because of the contract rate and exemption provisions of the Act. Under 49 U.S.C. 10713 railroads can now enter into contract rates on otherwise regulated movements, while under 49 U.S.C. 10505 railroad rates and practices involving, for example, commodities moving in boxcars of TOFC/COFC (trailer or container on flatcar) service are exempt from virtually all regulation. Previously all such railroad services could have been performed only under tariffs filed with the Commission, and carriers failing to file tariffs would have been subject to enforcement action. Under the exemption and contract rate provisions carriers now sometimes charge rates that in the past might have been found unlawfully discriminatory or concessionary.

Other rail pricing changes involve charging different rates for movements over different routings between two points (see 49 U.S.C. 10741(f)(4)) (which would have previously been discriminatory); "negative surcharges" (i.e., unilateral joint rate reductions under 49 U.S.C. 10705a in which only one of the joint rate partners reduces its division of revenue to encourage use of a particular route, which would have previously constituted an improper joint rate change and, possibly, an illegal rebate); and assessing, for competitive reasons, a lower rate for a longer haul than for a shorter one (see 49 U.S.C. 10726).

Rail service has changed largely as a result of the many joint rate cancellations and surcharges effected pursuant to 49 U.S.C. 10705 and 10705a, some of which might previously have been found illegal and subject to potential enforcement action on grounds of unlawful discrimination. Also, some surcharges over branch lines might previously have been subjected to enforcement action as illegal *de facto* abandonments or embargoes, while other surcharge or joint rate cancellation actions could have been found to constitute *de facto* route closings in violation of protective conditions imposed in old merger cases.

With respect to motor carrier operations, the most prevalent and visible market strategy that might previously have been found illegal is the vigorous price competition, both with and without tariffs. Contract carriers of property are no longer required to file tariffs; common carriers continue to file tariffs, but they do so on very short notice, and many file discount tariffs that might have subjected them to enforcement action in the past. These discount tariffs are described in more detail in Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980*, served Sept. 13, 1983. Some of these tariffs may have been considered discriminatory or concessionary in the past. Also, while household goods carriers still file tariffs, they can offer binding estimates and service guarantees under 49 U.S.C. 10935, each of which would have been illegal in the past.

Other previously illegal motor carrier strategies that are now permissible include for-hire transportation by a corporate subsidiary (49 U.S.C. 10524) and dual common/contract carrier services performed by a single company.

As delineated in our budget submission, these deregulatory changes have reduced OCCA's workload in a number of functional areas, which is part of the reason why the Commission decided to consolidate the field offices in the reorganization planned for FY 1987.

OCCA WORKLOAD DATA

Mr. **Lehman**. Please also update for the record the OCCA workload data found on page 905 of last year's hearing record.

[The information follows:]

Use of ICC Enforcement Resources
By Violation Areas With Caseload and Hours

	1983 1/		1984		1985		1986 (3 Months)	
	Percent of Investigations	Percent of Hours	Percent of Investigation	Percent of Hours	Percent of Investigations	Percent of Hours	Percent of Investigations	Percent of Hours
Antitrust			2	2	1	6	0	3
Ethics			3	2	1	5	1	7
Fitness/Safety			1	1	2	5	9	4
Household Goods			1	1	2	3	2	8
Illegal Lumping	9	3	5	3	0	1	0	0
Insurance	10	2	39	5	71	18	70	14
Kickbacks			1	9	1	7	0	0
Claims	3	5	7	15	5	18	4	23
Owner/Operator	16	23	10	19	9	23	9	32
Unauthorized Operations (Passengers)			3	2	4	5	2	3
Weight-Bumping			0	0	0	0	0	0
Concessions/rebates	8	12	10	23	2	5	1	1
Service			0	0	0	0	0	0
Unapproved Mergers			.5	.5	0	0	0	0
Fitness (Other Than Safety)			1	.5	0	1	0	0
Misappropriation Assets			.5	.5	0	0	0	0
ICC Orders			.5	.5	0	0	0	0
Record maintenance	3	4	.5	1	0	0	0	0
Directed Service			0	0	0	0	0	0
Unauthorized Transportation (Property)	37	29	15	14	2	3	2	5

1/ Data obtained from Committee's hearing record on the Commission's 1985 Budget, page 25, Table 4.

NOTE: First eleven items designated by Commission as High Emphasis Enforcement categories.

COMPLIANCE SURVEYS AND ROADCHECKS

Mr. **Lehman**. Please also update the compliance survey and roadcheck data found on page 906 of last year's hearing record.

[The information follows:]

The number of compliance surveys and road checks performed are reflected in the following table.

	Fiscal years—				
	1982	1983	1984	1985	1986 [1]
Compliance Surveys	2,015	1,658	1,531	1,370	263
Road Checks (vehicles inspected)	5,532	3,633	10,615	3,852	491

[1] 3 months.

As to compliance surveys, there were 263 conducted during the first quarter of Fiscal Year 1986. Violations discovered in 205 of the surveys were administratively handled with the carriers for correction. The results of 16 of the total compliance surveys conducted involved allegations that required detailed investigation.

During the first quarter of Fiscal Year 1985, the field staff conducted road checks of 491 vehicles and 134 violations were discovered. The nature and number of violations follows:

Insurance	19
Leasing/owner-operator	49
Vehicle identification	33
Unauthorized transportation	33

OCCA STAFF REDUCTION

Mr. **Lehman**. Last year, we were told by former Chairman Taylor that the 261 staff year figure proposed last year for the Office of Compliance and Consumer Assistance was a "bare bones" figure, especially considering the insurance problems that were cropping up.

You are now proposing a 218 level. How do you justify another 11 percent reduction when these insurance problems seem to be getting worse?

Mrs. **Gradison**. Let me say that it was a "bare bones" budget under that organizational structure, and one of the reasons that the Commission voted to reorganize OCCA was we did not feel that we were getting the most for our money, and we wanted to be able to come back to you with an appropriate recommendation to say we feel that we can do more with less, and that is why the substantial reductions.

And we are satisfied, that we are going to be able to do the job, and do it well with this lower number. Bernard, do you want to add anything to that?

Mr. **Gailliard**. I would just add that it has been necessary to make some adjustments in the discretionary areas, on road checks, compliance surveys, in those areas, to meet the substantial increase in activity in the insurance area, and we have been able to do that without any problems.

OCCA COST SAVINGS

Mr. **Lehman**. And will you provide a detailed breakdown of the cost savings for our record, please?

Mrs. **Gradison**. Sure; happy to do it.

[The information follows:]

The reorganization will result in an overall saving of approximately $1,709,000. A breakdown of the savings is listed below:

[In thousands of dollars]

	Before costs	After costs	Savings
Personnel	$9,013	$7,539	$1,474
Telecommunications	342	315	27
Equipment, copiers	84	68	16
Space	995	731	264
Travel	533	693	−160
Other operational expenses	964	812	152
Totals	11,931	10,158	1,773

OCCA TRAVEL FUNDS

Mr. **Lehman**. Would you explain your request for a 12 percent increase in OCCA travel funds when staffing is proposed to be reduced by 11 percent?

[The information follows:]

The travel budget request is for $740,000, up $80,000, from FY 1986. The reason relates to the fact that in FY 1987 the Commission will maintain 22 rather than 55 field offices. The field offices remaining open will assume the responsibility for larger territories, absorbing areas previously assigned to the closed offices. Consequently the travel time and expenses of the special agents stationed at the remaining offices will moderately increase in order to cover their broadened territories.

MANAGING DIRECTOR CONTRACTS

Mr. **Lehman**. Please update for the record the managing director contract breakdown found on page 909 of last year's hearing record.

[The information follows:]

MANAGING DIRECTOR CONTRACTS

	1985	1986	1987
Timesharing contracts	$693,000	$700,000	$700,000
Communication network contracts	20,000	17,000	17,000
Software development contracts	5,000	2,000	2,000
Data capture contracts	18,000	18,000	18,000
Computer and word processing equipment contracts:			
Rental	39,000	11,000	5,000
Maintenance	283,000	228,000	228,000
Health services contract	59,000	49,000	49,000
Various small service contracts	57,000	77,000	95,000
Total	1,174,000	1,102,000	1,114,000

The Managing Director's office has administrative responsibility for the above contracts. However, since the costs of these contract services are charged to the offices actually receiving the services, only a small portion of the total contract cost is charged to this office.

FURNITURE AND EQUIPMENT

Mr. **Lehman**. On page 78, would you explain the 212 percent increase in "furniture and equipment", from $70,000 to $219,000?

Mrs. **Gradison**. I asked the same question myself. I said what's this? Who's buying furniture when we are shrinking? And the answer is we are not.

We are buying some mini computers, and the increase of approximately $150,000 in this category will be used to purchase micro computers which will be used to maintain modal databases and perform various types of cost and financial analyses of carrier data, and other statistical information required by law.

This capability will replace some of the time-sharing services now under contract, and during the transition year of fiscal year 1987, these costs will not be offset by a proportional decrease in time-sharing. However, this one time expense will, in future years, supplant much of the recurring cost of time-sharing, and I might also add, that in the event the Commission were to be abolished and our functions were to be transferred, that there is quite a demand for these micro computers within the government, and there should be no trouble in reselling them, or transferring them intact to the DOT or the DOJ, wherever they may be needed.

I think it is a worthwhile investment and one that should be made.

MICRO COMPUTER PURCHASES

Mr. **Lehman**. How many mini computers did you buy? By the way, what is the difference between a mini and a micro?

Mrs. **Gradison**. I am sorry. These are micro computers that we are purchasing. Personal computers.

Mr. **Guthrie**. Our anticipated acquisition, as I recall, is like five or six for the Bureau of Accounts. Is that pretty close to the mark?

Mr. **Young**. I thought it was ten but——

Mrs. **Gradison**. Ron has asked for ten.

Mr. **Guthrie**. Oh, he has asked for ten. [Laughter.]

The answer to that question is, that is being negotiated. I think my figure is five; his is ten. It may be somewhere in between, and, for Bill Southard's shop, we are talking about one.

Mr. **Southard**. One.

Mrs. **Gradison**. But I really feel that it is a worthwhile investment, if we get the people trained, to be able to use the capabilities that the micro computers have, and we can achieve tremendous efficiencies, and I think it is worth pursuing, and I am going to be on the other side of the negotiating table with the managing director to see that Ron gets as many of these computers as you all will provide us the opportunity to have, because I think we can use them.

MICRO COMPUTER PURCHASE DETAILS

Mr. **Lehman**. I would like, for the record, to have a very detailed breakdown on this. But it seems like, at this point in your operation, to go out and buy these PC's, just to stash around your agency, hoping to sell them off next year, it sounds a little bit——

Mrs. **Gradison**. Well, no, what would happen is that the places where these micro computers would be put into place, those functions are going to continue.

Those rail audits, if they were to go into the Bureau of Accounts; the functions for which we would be putting those micro computers into use, those would be used wherever in the government those functions are carried out.

So in effect, I think that we would be providing an opportunity for a more efficient transfer of our functions than we may have in place at this time.

Mr. **Lehman**. And you could not borrow some from the DOT until you——

Mrs. **Gradison**. Let me let Director Guthrie add something here.

Mr. **Guthrie**. Let me just reinforce the Chairman on this, Mr. Chairman. We have looked at this very hard, and my systems people tell me that there is a very real aftermarket for these computers.

There is no problem with them sitting on the shelf, moldering some place, in case they sunset the agency. Secondly, we concluded that it was false economy to continue to rely on time-sharing from mainframes which is very costly, when the sophistication of these micros is at the state it is.

So it is something we have looked at very hard, and have concluded that it is definitely an economy move.

Mrs. **Gradison**. And, I will just kind of complete the plea. I think that it also helps with the development of skills that can be transferred for our workers, in the event that we are sunsetted. Our workers will then have skills which they developed on the PC's which they can transfer to other places, and that is also one of our big concerns, is making sure that we do have transferable skills within the building.

[The information follows:]

MICRO COMPUTER PURCHASES

Function	Number of Units	Est. Cost
Perform waybill data analysis, statistical analyses and studies requested by the Commission	1	$8,000
Document, case, correspondence, Applications and Fees control	2	16,000
Legal case data retrieval system, maintain rail abandonment statistics	2	16,000
Uniform Railroad Costing System and statistical study, Railroad Branch Line analysis, standards for Long-Cannon evidence on coal cases, and determination of scale, scope, and density in railroad industry	2	17,000
Cost and statistical analyses of proceedings before Commission, Suspension Board case analysis	2	17,000
Perform revenue adequacy analyses, weekly carloading statistics, and General Rate Increase for Motor Carrier (MC–82) analyses	1	8,000
Perform depreciation functions including update of rail data base, calculate reserve ratios, determine investment base for annual revenue adequacy proceedings	5	68,000

TRAVEL

Mr. **Lehman**. Please also explain the 16 percent travel increase listed on page 78, from $965,000 to $1,119,000. I think you have partly explained that this is caused by closing down your offices, but if there is any further explanation, we would like to hear it.

Mrs. Gradison. Well, this is another "man bites dog." With regard to the travel funds, they have been increasing because of the reorganization of personnel in the field.

The "man bites dog" portion is, because the Bureau of Accounts will no longer require travel funds for field auditors, and the Commission's travel requests can actually be reduced by $170,000. So again, the man just bit the dog, the woman just bit the dog——

Mr. Lehman. The person.

Mrs. Gradison. And we can reduce that request by $170,000. I want to make sure that we have enough money in the Travel Fund Account so that we can make this consolidation of OCCA work.

I would hate to transfer the people to a fewer number of offices and then say, "Sorry, guys, you can't travel; we were just Gramm-Rudman'ed; there's no money for travel." Because then we won't be able to do the job that we intend to do.

So I can offer this $170,000 reduction. Maybe we ought to keep it in there in case you give us a 20 percent sequestration in October.

Mr. Lehman. You know how the metaphor came about, about man bites dog, don't you?

Mrs. Gradison. The newspaper story.

Mr. Lehman. Sure. And what's news and what's not news.

Mrs. Gradison. That's why I said this is a man bites dog, here. This is news. I've asked for less money than originally.

Mr. Lehman. Right.

Mrs. Gradison. Of course we got in trouble one year when we did that.

OTHER SERVICES

Mr. Lehman. Please also provide for the record a breakdown of the Commission's "Other Services" for fiscal years 1985, 1986 and 1987.

[The information follows:]

Other services	Fiscal year—		
	1985	1986	1987
Auto maintenance and parking	$13,000	$10,000	$10,000
Household goods storage		17,000	10,000
Investigations and other legal costs	67,000	100,000	100,000
Training	[1] 8,000	150,000	142,000
Computer equipment maintenance	283,000	228,000	228,000
Other maintenance	60,000	65,000	65,000
Building repairs and maintenance	150,000	[2] 231,000	233,000
Tenant alterations-expensed	1,000	5,000	5,000
Health services	58,000	49,000	49,000
Major contracts	240,000	384,000	402,000
Minor contracts	57,000	77,000	95,000
Miscellaneous services	14,000	21,000	74,000
Timesharing contracts	693,000	700,000	700,000
Communication network contracts	20,000	17,000	17,000
Software development	5,000	1,000	2,000
Data capturing contracts	18,000	18,000	18,000
Total	1,687,000	2,073,000	2,150,000

[1] Due to the severe FY 1985 funding situation, all training with the exception of a minimal level of upward mobility training was frozen. The FY 1986 level indicates a resumption of necessary training.

[2] The FY 1986 increase reflects an increased cost of guard service.

OFFICE SPACE COST DATA

Mr. **LEHMAN**. Please update for the record the office space cost data found on page 912 of last year's hearing record.

[The information follows:]

COST PER SQUARE FOOT

	FY 1985 and 1986	FY 1987	Percent change
Headquarters office space	$20.34	$21.04	[1] 3.5
Field office space	[2] 14.00	[2] 13.56	[3] 3.1

[1] Percent increase.
[2] Average.
[3] Percent decrease.

OFFICE SPACE AND SPACE PER EMPLOYEE

Mr. **LEHMAN**. Please also update for the record the office space and office space per employee data found on page 913 of last year's hearing record.

[The information follows:]

OFFICE SPACE

Year	Headquarters		Field	
	Square feet [1]	Cost per foot	Square feet [1]	Average cost per foot [2]
1983	219,805	$8.99	113,470	$9.76
1984	201,560	10.25	80,240	10.68
1985	165,000	20.34	65,000	14.00
1986	153,000	20.34	42,000	14.00
1987	145,000	21.04	42,000	13.56

[1] Year end.
[2] Average.

OFFICE SPACE PER EMPLOYEE

[In square feet]

Year	Headquarters	Field	Total
1983	219	243	227
1984	230	240	231
1985	226	236	229
1986	212	224	215
1987	210	224	213

CLOSING REMARKS

Mr. **LEHMAN**. I just want to compliment you and your staff for the record.

Mrs. **GRADISON**. Thank you.

Mr. **LEHMAN**. I wonder if Mr. Coughlin has any other questions?

Mr. **COUGHLIN**. Mr. Chairman, I have no further questions.

Mrs. **GRADISON**. May I thank both of you for the nicest hearing that I have had since I have become Chairman.

Mr. Lehman. The fastest. And maybe that is because none of the other Commissioners were around.

Mrs. Gradison. They are welcome to come.

Thank you.

Mr. Lehman. The hearing is adjourned.

THURSDAY, APRIL 17, 1986.

UNITED STATES RAILWAY ASSOCIATION

WITNESS

STEPHEN BERGER, CHAIRMAN, UNITED STATES RAILWAY ASSOCIATION

Mr. **LEHMAN**. The subcommittee will come to order.

This morning we will receive testimony on the fiscal year 1987 budget needs of the United States Railway Association. We are pleased to have before us Mr. Stephen Berger, the chairman of the United States Railway Association.

We will be pleased to hear your statement at this time. You may read it, or if you would prefer to summarize it, we shall insert your entire statement in the record.

OPENING REMARKS

Mr. **BERGER**. Thank you, Mr. Chairman.

I am delighted to appear here before you today. I have provided a written statement which I would like to submit for the record, and if I may, I would like to summarize it briefly and comment about some of my concerns about the issue which it addresses.

You understand, of course, that I speak only for myself and not for the rest of the U.S. Railway Association Board.

DELAY IN DECISIONMAKING

I am sure you recall our mutual frustration when I appeared here last year. It was difficult for me to give very useful answers to many of your very important and appropriate questions. You may also recognize that most of the issues are unfortunately still on the table a year later. What I have attempted to do in my written statement is explain the events of the last year in order to understand why so little apparent progress has been made. To put it simply, it has taken us all so long to be able to reach a conclusion about the merits of the Norfolk Southern purchase of Conrail because of the pervasiveness of its consequences for third parties, both public and private.

For example, the Administration proposal to sell Conrail to the Norfolk Southern is still not finalized in the sense that the divestitures required by the Justice Department to remedy some of the competitive problems have not yet been finalized by either the Justice Department or by the U.S. Railway Association. That work goes on today and will be finished soon, but final answers are just not possible now.

If the committee wishes, I can discuss later the kinds of issues we are evaluating and what appear to be the key decision points. As you probably know, we are not evaluating the first divestiture proposal but rather, depending upon how you count, we are up to proposal number three or four. This is really no one's fault, reflecting instead the very nature of the issues involved in the Administration proposal. The carriers involved have not dragged their feet, nor has the Justice Department; and the U.S. Railway Association has responded quickly and diligently to assess the information made available to it, when it was available.

The fact is, we have all been looking at a moving target because of the difficulty Norfolk Southern has had satisfying both the Justice criteria as well as the desire of the divestiture carriers, Guilford and P&LE, to be protected from the perilous conditions that they would face after a Norfolk Southern merger.

USRA ACTIVITIES

Over the course of the year, the U.S. Railway Association finished two major pieces of work while awaiting the divestiture analysis to be finalized. These studies were in response to Congressional requests subsequent to the Administration's selection of Norfolk Southern.

First, because the Administration argued that sale to Norfolk Southern was necessary to assure Conrail's viability, we were asked to update our previous determinations regarding Conrail's prospects. I will merely say now that we found no specific or persuasive evidence to support the argument that Conrail in the future would depart from its present future viability.

The U.S. Railway Association has recently analyzed Conrail's '85 results and if you wish, I will be pleased to discuss how they fit into the patterns of previous years, and what degree of further confidence they may provide about the future.

Second, we evaluated the impact of the enhanced NS market power in terms of traffic losses that would be experienced by other railroads. These studies are usually called diversion estimates, which in some cases is far too mild a word. The U.S. Railway Association also retained an investment banking firm—Lazard Freres—to assist in the financial analysis of the Norfolk Southern proposal.

After much work had been done last summer and fall, it was suspended until Norfolk Southern could modify its financials to reflect the ongoing revisions to the divestiture plans. Hopefully this work can be finished soon, although supplemental data is still being prepared by Norfolk Southern in response to a recent request from Lazard.

Support for and opposition to the Norfolk Southern purchase has been vigorous, even if the evidence is not yet available for an objective appraisal of some of its benefits and harms. Despite limitations on conclusions from final analysis of some issues, I am willing at this time, after some reflection, to make some concessions about how the issues are being framed in the current debate:

COMPETITIVE IMPACTS

First, I would have to say that I would be very troubled if I thought that our protracted preoccupation with the divestiture led us to assume that the only competitive impact of the proposed sale to Norfolk Southern was on Guilford and P&LE. There are impacts on shippers and other railroads, impacts which to some extent constitute nothing less than a federally-enacted redistribution of profits among various private corporations and their shareholders—essentially a transfer to Norfolk Southern, one of the largest and strongest railroads, of revenues and profits from some other railroads, including some that are far smaller and weaker such as the ICG and the Chicago and Northwestern. These railroads are far weaker than not only Norfolk Southern, but also Conrail.

There are short and long term impacts on distribution patterns, such that it can be said that this transaction changes the shape of the rail map in the United States. Some of the opponents may call it federally designed destabilization of the industry, and some might wonder if that is a proper government role absent a compelling need.

CONRAIL'S VIABILITY

Second, I am concerned if the sale, either to the Norfolk Southern or any sale, is being justified by predictions that Conrail's viability is seriously in doubt. These predictions are contradicted by present facts and a now substantial history.

Private bids for Conrail, including those which were rejected by the Administration and those which are still on the table, are ample testimony to the financial market's opinion on this subject. Any purchaser who questions Conrail's viability at this time merely as part of an effort to close the transaction or affect the price, I can accept. That is a perfectly normal bargaining tool that buyers and sellers use in normal commercial transactions. However, I cannot accept this as a serious policy debate on the viability issue. It is a buyer's way of working down the price, and while I think it is perfectly acceptable in that context, it is not something which I think we ought to get diverted on to as a serious public policy issue.

Perhaps more importantly, I would like to note that if it were to have been the case that Conrail were authoritively found not to be viable, then a sale to Norfolk Southern is the wrong solution to that problem. In such a case, NERSA calls for a careful process that produces a balancing decision by which other railroads in the region are strengthened with as little impact on competitive service as is possible.

Therefore, I would like to leave with you these two major items, and thank you for the opportunity to appear before you and to answer any questions that you might have.

PREPARED STATEMENT

[The statement of Mr. Berger follows:]

STATEMENT OF STEPHEN BERGER, CHAIRMAN
UNITED STATES RAILWAY ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND RELATED AGENCIES
HOUSE COMMITTEE ON APPROPRIATIONS
APRIL 17, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I appreciate the opportunity to appear here today to report on the status of Conrail, the Conrail sale process, and the work of the Association. As the Committee is aware, USRA's request for $2.3 million of new budget authority was omitted from the President's budget for fiscal 1987. The Office of Management and Budget (OMB) also proposed the recission of $640,000 of the Association's fiscal 1986 funding, to be effective on March 31, 1986, based on the assumption that "The activities of the USRA will be completed in the middle of 1986 [and] the agency will have no function thereafter." March 31 has come and gone, and Congress has taken no action to effectuate the proposed recission since the Association is actively engaged in analyses of various documents and issues involved in the Administration's proposal to sell Conrail to Norfolk Southern Corporation.

As some of you may recall, at last year's hearing you presented me with many questions to which I was not able to give very useful answers -- because necessary information and analysis was not yet available. That was a frustrating experience for me too, because I could fully appreciate the importance and sincerity of the Committee's concerns and questions.

I suspect the Committee may be equally frustrated that, today, a year later, many of the same questions are still on the table. Therefore, I would like to start by recalling where events stood at this time last year, reviewing developments since then and USRA's participation in them, and summarizing where things stand now.

At the time of last year's hearing, three events had just occurred. In January of 1985, the Department of Justice advised the Secretary of Transportation that if Norfolk Southern were to be selected as the purchaser of Conrail, Justice would require that it pre-approve a divestiture plan by which other carriers would be allowed to substitute for the reduced competition that would exist in certain locations after Norfolk Southern acquired Conrail. Shortly thereafter, the Secretary of Transportation announced her support for the Norfolk Southern proposal, and executed a contract with Norfolk Southern which provided that divestitures satisfactory to the Justice Department would be arranged as a pre-condition to consummation of the transaction. Shortly thereafter, the Federal Railroad Administrator announced a plan for Norfolk Southern to divest properties to Guilford Transportation Industries and the Pittsburgh & Lake Erie Railroad

(P&LE) that was intended to meet the Justice Department requirement.

The Association staff promptly received a number of Congressional requests to study various aspects of the Secretary's proposal, and these inquiries were just commencing as last year's hearing of this Committee was held. The issues that USRA was asked to examine can be grouped into four major areas. First, we were asked to evaluate the traffic losses of other railroads to the enhanced market power of a combined Norfolk Southern/Conrail. Second, we were asked to conduct a financial analysis of the Norfolk Southern proposal, for which I retained the assistance of the investment banking firm Lazard Freres & Co. Third, we were asked to evaluate whether the proposed divestitures to P&LE and Guilford would adequately mitigate the anticompetitive effects identified by the Justice Department. Finally, because the Secretary had justified selecting Norfolk Southern by her view of Conrail's future prospects, USRA was asked to update its analyses, previously published in 1983, by which USRA's Board unanimously found Conrail viable. Under the procedures established by the Northeast Rail Service Act (NERSA), that 1983 conclusion required the preservation of Conrail as an entity and started the Secretary's search for a buyer of the Conrail stock held by the United States.

The Norfolk Southern divestiture agreements with P&LE and Guilford were not finalized until April and June, respectively.

Guilford, P&LE, and Norfolk Southern then started to prepare detailed operating and financial plans and to provide other necessary information so that Justice and USRA could evaluate whether the divestiture carriers would provide meaningful competition in the problem markets, including whether they would be financially viable over the long term.

During this same Spring-Summer period, USRA met extensively with Norfolk Southern officials to review supporting documentation and assumptions for their plans for post-merger operations. One key focus of this work was the evaluation of Norfolk Southern estimates of the traffic it could take away from other railroads after it purchased Conrail. The Association also conducted similar reviews with those affected railroads of their estimates of loss due to the merger. USRA staff provided the Congress with a report in late July 1985 on these so-called "diversion studies." In summary, the staff found that Norfolk Southern estimates of traffic diversion understated the likely Norfolk Southern/Conrail gains that would be achieved at the expense of several other railroads, and that in certain cases, the affected carrier's harm would be substantial. As you probably know, the Interstate Commerce Commission also reviewed this one issue, at the request of Congressman Florio, and reached substantially the same conclusions.

In that same July 1985 report, USRA staff also provided the results of its re-examination of the Conrail viability question.

No persuasive evidence was found to support the argument that Conrail in the future would depart from its present and recent viability. I won't elaborate on this subject in light of USRA's extensive previous reporting, but stand ready to answer any specific questions you may have. Certainly Conrail's 1985 performance strengthens USRA's earlier conclusions.

Following that report, USRA started its evaluation of the divestiture proposals. USRA staff conducted extensive research interviews with Guilford and P&LE to ascertain how they had developed their operating plans and underlying assumptions. During this same time, the consultant to Justice, R.L. Banks & Associates, was conducting a similar inquiry. Banks reported in mid-September that the information available to it was not adequate to conclude that the divestitures would meet the Justice Department's criteria, principally because unusual and ambitious assumptions underlying the carriers' plans had not been substantiated adequately. Just as USRA was preparing to release its own critique of the divestitures late in September, which in general agreed with the Banks conclusion, Justice announced that it had concluded that the divestiture plans did not meet its criteria for solving anticompetitive effects of the proposed sale to Norfolk Southern. A second divestiture plan, announced in principle by Norfolk Southern at that time, was never finalized, and an ongoing negotiation process commenced to satisfy Justice's concerns.

USRA's financial consultant, Lazard Freres, had commenced its financial evaluation of the Norfolk Southern proposal during this same August-September period. Norfolk Southern announced after the divestiture negotiations were reopened that its financial pro formas for operation of a merged Norfolk Southern/Conrail would have to be revised after the new divestiture plans were defined. The new Norfolk Southern data were not provided to Lazard until this February, and without substantial and important details and backup information that Lazard requires to complete its analysis. Lazard recently met with Norfolk Southern to discuss these needs, and was assured that an appropriate response will be forthcoming shortly.

Returning to the divestitures, Justice announced its preliminary approval of new agreements on November 19, 1985. Guilford and P&LE started revising their operating and financial plans. USRA received both plans in February, and commenced the process of meetings and review of backup documentation. The USRA staff is nearing completion of the Guilford plan review, perhaps resolving final data questions this week. While new final divestiture agreements were signed in February, key parts of the Guilford agreement with Norfolk Southern have yet to be negotiated, without which significant elements of the Justice criteria cannot be studied.

As to the P&LE, significant basic data needs have yet to be met by this carrier. USRA has ascertained that Justice and its consultants are in a similar status regarding P&LE.

By focusing on the Norfolk Southern proposal, my chronology so far has omitted some facts of which you are well aware. First, other offers to purchase the Conrail stock have been submitted by Morgan Stanley & Company and Allen & Company. Both purport to offer a higher price to the government than the Norfolk Southern proposal. These offers are intended essentially to take Conrail public through an offering process in which the initial investors underwrite a guaranteed return to the Government, and reserve the profit potential above that for themselves. The other event of note, of course, is the Senate's passage of legislation approving the Secretary's authority to sell Conrail to Norfolk Southern.

It is apparent that we still lack the data to answer many questions. However, many matters at least can be focused more clearly than a year ago, and I hope to provide the Committee helpful responses to your questions today.

Finally, if Conrail should not be sold in the near future, and the Congress continues USRA's Conrail monitoring and sale evaluation functions, then the Association will require an appropriation of $2.3 million for fiscal 1987. An appropriation of that magnitude will provide for approximately 22 full-time employees. I have discussed wind-down plans with USRA's officers in the event a sale occurs. The necessary actions would require six months to complete after a decision is made that USRA's functions are no longer required, and are more fully explained in our budget justification.

RECOGNITION OF HON. JOHN J. MC FALL

Mr. **Lehman**. Thank you, Mr. Berger.

Before we begin the questioning, I would like to recognize publicly the Honorable John J. McFall, who for many years served this committee as chairman, and did a marvelous job.

Mr. **McFall**. Thank you, Mr. Chairman.

PRICE CONCESSIONS

Mr. **Lehman**. I would like to begin this morning, as I did with the FRA Administrator, John Riley, and discuss Conrail's selling price. The Administration has gone out of its way many times to say that price has never been the predominant consideration of the Secretary in selling Conrail. But it seems that this strong deemphasis on price may have greatly depressed the value of the bids the government has received for Conrail. Do you think the $1.2 billion Norfolk Southern offer is fair to the taxpayers?

Mr. **Berger**. Well, I share with the FRA the judgment that price should not be the only consideration. There are obviously public policy issues which have to be taken into consideration. On the other hand, I don't think that given what we know now about the condition of Conrail, it should be necessary for the government to make significant price concessions in order to achieve its objectives.

As I said in my opening remarks, we have hired Lazard Freres to assist us and Congress in evaluating the Conrail sale proposal, and we still are waiting for their analysis, and they are still waiting to get information from Norfolk Southern to complete their work. But I think it is fair to say with reasonable confidence that if the question was simply one of what the fair market value of Conrail would be in the private sector, then $1.2 billion is below what price the market would place on the company.

I think that another factor which has been discussed as part of the public debate, and one which the Congress has to take into account when it tries to determine price, is that to the Norfolk Southern the purchase of Conrail probably has a greater value than to almost any other purchaser at this point. Potential for rationalization and the fact you are really creating a pattern of monopoly on traffic on both ends of the haul, means that the value to the Norfolk Southern of this purchase clearly has to be at the top end of what anybody should be willing to pay for this railroad.

Mr. **Lehman**. In other words, you are saying that Conrail is worth more at this point to the Norfolk Southern, because of its configuration, than it would be to any other railroad, or possibly to investors in a public offering?

Mr. **Berger**. I think that is correct.

HIGHER SELLING PRICE

Mr. **Lehman**. I know you are waiting on the evaluation responses from Lazard Freres in regard to the fair market value of Conrail. We are still talking about $1.2 billion from Norfolk Southern even though it has been kicking around for over a year. What do you think a ball park figure should be at this time based on your own experience in the investment field?

Mr. **Berger**. Well, I am going to resist putting an absolute number on it.

Mr. **Lehman**. I say ball park.

Mr. **Berger**. That will clearly be a headline in tomorrow's paper, which I think is not fair until we finish the final evaluation. I do think if you watch the process that has taken place in the last several months, with new people coming in, each of them levering this auction up a couple hundred million dollars, I think we are still a ways from seeing what a number would be if you opened this up for market discussion. I think that, depending on some factors, the number is considerably higher than what we have been talking about.

REESTIMATION OF PRICE

Mr. **Lehman**. Mr. Riley told us there is very little in Conrail's performance that would lead anyone to reestimate the price that was bid for Conrail a year ago. Do you agree with him?

Do you think things have changed positively since that time?

Mr. **Berger**. Well, I think what you have is another year in which Conrail has demonstrated that in the face of changing market conditions, it was able to adjust its business pattern and to make a profit in a year in which the industry went through both significant revenue and expenditure problems.

I don't agree that if one was going to reestimate the price one should reestimate the price downward. A lot of people have tried to say that. I think that is really, from the numbers, very hard selling, and I am sure the Committee has looked at the numbers. This is the fourth year in a row in which Conrail has improved its performance. It has achieved profits and cash flow which are the envy of all but a few railroads in the country. There was a balloon year in '84. You had a great deal of movement at the end of '84 in preparation for a potential coal strike, and you had high Conrail profits. If you look at Conrail's numbers in '85 it proves that '81 through '84 were not flukes and it is a year in which Conrail not only had positive cash flow, it also went to full industry wages, including having to pay an amount of money which they owed for retroactive wage restoration from the previous year.

QUESTIONABLE SELLING TACTICS

Mr. **Lehman**. Going back to your opening statement, you said that as a buyer, Norfolk Southern had every right to raise the question of viability of Conrail. If I were trying to buy something, I would not try to argue that it is a more valuable piece of property than what I was offering. But if I were trying to sell it—as DOT is trying to do—do you think that they are acting in good faith when they too question the viability of a piece of property they are trying to sell on behalf of the taxpayers?

Mr. **Berger**. I wish they had had other things on the table and I was still a banker looking to do business. I don't think the evidence supports the question of viability.

Mr. **Lehman**. I am questioning whether a seller is really selling in good faith when that seller questions the validity of its own product?

Mr. **Berger**. I know exactly what you are trying to say. I prefer not to speculate on what goes on in the mind of the seller in this case.

Mr. **Lehman**. Sometimes when I sold cars, sometimes the best way to sell it was to make like a buyer shouldn't pay the price, that it wasn't really a good car. That made them want to buy it.

Mr. **Berger**. Maybe that is only if you have one buyer. If you have three buyers you might have tried a different tactic.

Mr. **Lehman**. Mr. Coughlin.

NERSA PROFITABILITY DETERMINATION

Mr. **Coughlin**. Thank you, Mr. Chairman.

We sure have a hard time getting a lot of answers on this whole Conrail sales question, which obviously is of tremendous importance to the folks in my area.

You indicated that a stand alone Conrail would be a viable entity?

Mr. **Berger**. Congressman, when we did our study in '83, which we had to do under NERSA, all members of the U.S. Railway Association Board found Conrail to be viable. Conrail has improved its performance each year since that point in time. It seems to me that anyone who makes the argument that Conrail is going to depart in any way from the experience of the last five years, when it has demonstrated steady improvement as a corporation, has a burden of making a specific rather than a general argument. I haven't seen any argument that holds up. Yes, it is my opinion that the judgment of the U.S. Railway Association Board in '83 is a judgment which still stands today and is probably stronger, since we have more evidence backing it up now than we had in '83.

CONRAIL TRAFFIC VOLUME

Mr. **Coughlin**. I know that Administrator Riley indicated declining projections in Conrail volume. How would you comment on that?

Mr. **Berger**. I have said both to Conrail from the time I took over as chairman, and to my staff, and in my testimony, that the determination of profitability is not a measure of volume. If you lose money on one unit of volume you don't make it up on more volume. The determination of profitability has to be an analysis of cost and an analysis of margin. I think that is the crucial issue.

In Conrail's first five years up to '80 we all were hung up on a discussion of volume of traffic, and it was clear that the right approach had to be managing the company to produce profit. I think that traffic volume in and of itself is not a meaningful criteria.

On the other hand, if you do look at traffic volume, and if you look at the last four or five years, with the exception of some extraordinary bumps Conrail has been relatively stable and has worked within a very stable band.

Mr. **Coughlin**. You would expect it to continue to stay within a stable band?

Mr. **Berger**. Perhaps, but more important, the question one would have to ask is, is this a viable company, is this a company which could change and has demonstrated the capacity to change in changing conditions? And my answer on the basis of the last four or five years is yes.

Could this company handle either a decline or a growth in traffic. The answer is yes. I think they have demonstrated the managerial capability to do that. I think that unless you are going to predict a major decline in the economic activity in the Northeast and Midwest—and nobody is doing that at this time, then I assume the range which they are forecasting is a reasonable range to assume they could continue operating. But the fact they could also respond to changes is very important.

FUTURE SHRINKAGE OF CONRAIL'S SYSTEM

Mr. **Coughlin**. Mr. Riley, I think, would say that in order to maintain its profitability, Conrail would have to continue shrinking and selling off properties. Would you comment on that? In other words, is Conrail viable, but only by shrinking and reducing services? That is not good either.

Mr. **Berger**. No, but I think the more reasonable question to ask is whether, if there are dramatic changes in the economy of the country and economy of the region, would Conrail standing alone or any other owner of Conrail behave differently? And since I think that is the fundamental question to ask, I didn't think it is a question unique to Conrail.

I have seen no plans for major shrinkage. I have seen comments in the press about it but, I don't know where it comes from and I have never heard Conrail talk about it. I think the fundamental issue would be the same for any owner. We have changed the rules under which the railroad industry operates. The Staggers Act did that to a large extent, and we now have the assumption that what we want are well managed railroad companies. If in fact the economy or business or traffic or technology change, I can't believe that any well run company would behave differently in responding to those pressures. I think if any company did, then their shareholders would have a true complaint against the management.

Mr. **Coughlin**. I still don't feel like I am getting a——

Mr. **Berger**. I will give you a direct answer—I do not.

Mr. **Coughlin**. Are we going to maintain services with a stand alone Conrail or do we end up shrinking services with a stand alone Conrail more than you would with a sale to Norfolk Southern?

Mr. **Berger**. I don't see any fundamental difference, if you are driven by economics, whether it is a stand alone Conrail, or Norfolk Southern or some other purchaser. The difference which you have to consider is a difference which says that if Conrail is a stand alone entity, in which its origins and terminations are predominantly as they are today, on its own property, whether or not it becomes more or less important for that stand alone company to maintain as much of the system as is marginally profitable because of the feeder impact that it has. Contrast that to a condition in which Conrail is part of a larger corporate entity, whose center of managment and Administration is not necessarily the eastern district. Whether or not that latter kind of situation would encourage management to push harder to maintain marginally profitable parts of the system is a fair concern.

I think that is the question you have to ask. If you ask that question, then the question of whether it is more valuable to have a stand alone Conrail to protect as much of its system as it can, as opposed to if it is a part of a larger entity with much more opportunity, in part is a function of whether that would be a situation in which larger portions of the system would be maintained. I think you come to the conclusion that a guy who is running a business is going to try to make sure he maintains as much of that business as he can because he doesn't have something else to fall back on. If the business is truly not profitable, then neither of those owners would maintain those parts of the system truly not profitable.

REAL PROPERTY SALES

Mr. **Coughlin**. In terms of Conrail's present financial profitability, I believe Mr. Riley indicated that a good part of that is a result not just of the operation but of sales of properties?

Mr. **Berger**. Well, we looked at it. Only a small part is what we call "real property sales." Of about $45 million of all liquidation sales in the 1986 budget, I think about $11 million is what you call real property sales. About $34 million are scrap sales. So I think we have to be careful when we talk about property sales. Three quarters of that are the normal kind of sales that every railroad does—scrap metal, scrap rail—that is perfectly normal to what any industry does.

Mr. **Coughlin**. Thank you, Mr. Chairman, I have no further questions. I will defer at this time.

Mr. **Lehman**. Mr. Durbin.

IMPACT ON THE STATE OF ILLINOIS

Mr. **Durbin**. Good to see you again this year. I would like to ask you a few questions on the same subject. I am particularly concerned about the impact of the merger in my home State of Illinois. I have found—I think this is a fair statement—that the railroads in that area are universally opposed to the merger, with the exception, of course, of Norfolk Southern. I note from your testimony that your staff has found evidence that indicates that such a merger would be achieved at the expense of several other railroads, and that in certain cases the effect would be substantial. Can you speak to any of the railroads in Illinois, specifically ICG or CNW?

Mr. **Berger**. In terms of some of the specifics I would ask if you would like a member of our staff, Larry Kaufer to talk about a number of the specific railroads. Let me repeat, as an introduction, one of the things I mentioned last year, one of the important things that ought to take place if we can do it on a timely basis, in a normal free market setting: a rationalization in the Midwest. I thought the Midwest carriers needed some time, needed a settlement of the West and needed settlement in the Midwest.

I think what I said in my opening remarks is with a Norfolk Southern/Conrail merger we were triggering a series of events for a series of carriers who were not ready to have those events triggered. I think that is the overview you have to have.

Mr. **Kaufer**. As we commented in our report last summer, when we discussed the divestitures and their impact, even the Norfolk Southern estimate of diversion indicated a very significant diversion as a percent of revenue to the ICG and CNW, and as we compared them with the railroad's own allegations, we concurred that the real number was probably somewhere in between. Even assuming the Norfolk Southern estimate, which probably would be a minimum value, the impact would be significant on those railroads.

Mr. **Durbin**. I, of course, am also interested in the whole question of price. When the Secretary appeared before us earlier this year, I asked her whether there was any price that would cause her to change her mind, or at least take a second look. In her testimony she said, "My only concern here is the public interest, I am not chasing dollars."

That is a good answer but it begs the question as to whether or not there is a bargain price being given to the Norfolk Southern in this merger. In response to Mr. Lehman and others, you have stated that $1.2 billion was below the market price as you would see it today, and that Conrail is more valuable to Norfolk Southern than other railroads. I take it you believe we should be asking for more money?

Mr. **Berger**. I believe there is absolutely no conflict between the Secretary's statement, which I strongly support—that there are a whole series of public policy and service issues—and the fact that one can look at this price and see this price being substantially below what the market ought to bring.

GUILFORD AND P&LE VIABILITY

Mr. **Durbin**. That is the same conclusion others have reached. I find it interesting that while the Administration continues to hold the position that this merger would not be anticompetitive, the reaction from the rail industry, other than the Norfolk Southern, is almost unanimous in opposition to this merger. That leads to two very different, separate conclusions on the anticompetitiveness question.

Could I ask you to speak to the viability of Guilford and P&LE based on this merger?

Mr. **Berger**. Well, I think the first part of speaking to the viability of Guilford and P&LE is that it is clear that in the face of the merger, with no relief, they would be in very serious condition. I think that is absolutely clear. I think that is incontrovertible.

I think that in terms of evaluating the proposals that have been crafted—and, as I said in my opening remarks, we now are at stage three or four, depending on your count of divestiture plans—in looking at those proposals, I am trying to make a judgment on how they would or would not help those two railroads. We still have a great deal of decisions. Both railroads have varying degrees of problems in terms of their capital structure that have to be resolved. They have to be resolved under any circumstances.

Secondly, there are different people in the railroad industry—I have talked to many of them—who have skepticism as to whether or not the plans as crafted can provide either of these railroads—without other kinds of assistance—with the ability to sustain themselves in the face of this divestiture and in the face of the merger.

There is a side issue to this, which I find interesting, and also hard to get a handle on. The Justice Department, in its comments on the transaction, pointed out a series of counties which would be specifically harmed by the merger and, therefore, the proposed divestitures to these two railroads were aimed at assisting those counties.

There is nothing in the divestiture agreements or in the plans of the railroads to whom the divestitures will be made, that mandates that they will in fact service those counties. One of the things we are all trying to do, including the staff at the U.S. Railway Association, is to try to peel back some of these financial plans to see what the impact would be on those counties, and whether or not it would even be profitable for these two railroads to service the very counties which triggered the Justice Department concern.

The other part of it, which the professionals on the U.S. Railway Association staff would never comment on, but since I take the liberty as chairman, and a businessman and banker and a variety of other things, is that you are talking about two railroads which you are trying to help survive. They would be competing against a formidable combination, one that includes one of the strongest railroads in the country financially, the Norfolk Southern, and Conrail, which has been one of the most aggressive and clever marketers and cost cutters.

I know which side I want to be on.

DELAY IMPACT

Mr. Durbin. Can you speak to the element of timing? Is there anything to be lost by delaying this sale a year?

Mr. Berger. The specific answer, I think, is no, if you mean by that whether there is anything that could be lost to the public interest or to the government. I think there is one thing that I am concerned with, wearing very clearly my U.S. Railway Association chairman hat—and it is not something which I say that would force a sale, but it will provide some relief to Conrail—the management of Conrail has done a spectacular job for the last four or five years, given all the problems they have had in the real world. The real world is the economy, and companies, and interest rates going up and down, and imports and marketing, all the rest. Conrail has done a terrific job. They are functioning almost as well as any other company in the country, and it is attributable to their management.

I do think it is important to allow Stanley Crane and his people to continue to worry about running the railroad and not having to spend a great deal of their time in trying to figure out where they are going. So I would hope that there could be a resolution to this issue. If the Congress were to judge it to be a proper transaction, it ought to be a proper transaction. If the Congress judged that it is not, in this case the House, for the Senate has already spoken—the House of Representatives ought to say so, so that Mr. Crane can go back and run the railroad and take care of Illinois, Pennsylvania, New York and New Jersey, and some other people in the Northeast and Midwest who are very dependent on rail service.

Mr. **Durbin**. Thank you.

CONRAIL FUTURE VIABILITY

Mr. **Lehman**. Thank you, Mr. Durbin.

Administrator Riley also indicated that Conrail is, at best, a marginal railroad with a cloudy future. What is your view of the future viability of Conrail as a stand alone railroad?

[The information follows:]

The USRA Board determined Conrail to be viable in its June 1983 report to the Congress required by NERSA. The Secretary of Transportation was part of the Board's unanimous vote. Since then, Conrail has improved and extended its performance for three additional years. It seems to me that anyone that suggests that the future is going to depart in any significant way from the experience of the last five years, in which Conrail has demonstrated steady improvement, has the burden of making a specific rather than a general argument. I am not aware of any such specific arguments, and therefore am quite content to stick with our Board's previous findings.

CASH FLOW AS FINANCIAL INDICATOR

Mr. **Lehman**. Mr. Riley told us that, in his view, net income was not the best way to measure Conrail's financial performance. He believes net profit or cash flow is a better yardstick. What is the best way to measure Conrail's financial performance and how do they measure up?

You answered part of this in your statement. Expand on it.

Mr. **Berger**. Would you like me to do so for the record?

Mr. **Lehman**. Please do it now.

Mr. **Berger**. I think cash flow is an important measure, one of the most valuable ways of doing it.

Mr. **Lehman**. Cash flow is not synonymous with net profit?

Mr. **Berger**. No, it is not.

Mr. **Lehman**. Net profit takes in such things as depreciation and other things?

Mr. **Berger**. They do matter, but in terms of our current attempts to measure the viability of the railroads, I think looking at cash flow is a valuable way of doing it.

CASH FLOW PERFORMANCE

Mr. **Lehman**. According to Mr. Riley, Conrail has operated on a break-even level over the last 16 months. Is this accurate, and does it cause you concern that Conrail is indeed viable? Also, why did he pick a 16 month time frame in your view?

Mr. **Berger**. Well, if I were cynical, which I am not, I would say that by picking the 16 month time frame you get two winters and one summer, which is a tough way of judging any railroad operating in Conrail's territory. I think that if you were to compare it on a calendar year basis or on an 18 month basis, you would have seen a very different pattern.

There were a series of unusual timing factors which, if adjusted for, would show you that their cash flow was higher. I refer for example, to the fact that during that period Conrail had to pick up $69 million of the wage cash flow from the settlement effective in

July of the previous year. In addition, during that period you had a $38 million hit on the cash side as a result of the ICC ruling on extension of the credit, which is a one time issue. So I think Mr. Riley's choice of the 16 month time frame is probably one which helps make a point.

PROPERTY SALES IMPACT ON CASH FLOW

Mr. **Lehman**. Is it true that Conrail's cash flow will stay even in 1986 only because of its plans to sell $50 million worth of property, as stated by Mr. Riley? If so, does this cause you concern?

Also, what kind of property is this, is it mainly derived from abandonments?

Mr. **Berger**. If you look at Conrail's cash flow in '86, of approximately $160 million only about $11 million of that are property sales and unused and unnecessary assets. The remainder are really scrap. As I said before, they are scrap metal sales, the kind of normal sales that any railroad or company would do in a given year.

Mr. **Coughlin**. So you disagree with both the $50 million figure and that of the $50 million figure only about $11 million is abandonment?

Mr. **Berger**. First, the $50 million figure is, I think, again, without nitpicking, $45 million, and of that, approximately $34 million is really scrap sales, which would be normal sales.

Mr. **Coughlin**. Fifteen million dollars has been abandonment?

Mr. **Berger**. They are not necessarily abandonments. They are real estate sales. They are unnecessary real estate.

Mr. **Coughlin**. Thank you.

Can that be abandonments?

Mr. **Berger**. It could be. I suppose most of it might be, yes.

Mr. **Coughlin**. Thank you.

ADEQUACY OF CASH FLOW

Mr. **Lehman**. You mentioned $160 million.

Mr. **Berger**. Yes sir, cash flow.

Mr. **Lehman**. One hundred sixty million dollars, is that a satisfactory number to keep the railroad viable as far as you are concerned?

Mr. **Berger**. It is a satisfactory number as far as I am concerned, but if I may, I would like to stop for a minute and talk about managing a company. To some extent we are looking at Conrail management managing a company to achieve certain ends and certain goals. They are reinvestments, reinvestment as needed in the capital plant, meeting certain new wage levels, and having certain marketing desires and marketing approaches.

I think Conrail is managing its business to meet its particular needs and, in that sense, I think they are doing very well.

If you change the dynamics of the company, if you change the ownership, if you change different patterns, I think you might find Conrail managing to a different end.

My answer to the basic question is yes, I am satisfied at this point in terms of what Conrail has to do.

DIFFERENCES IN CASH FLOW ESTIMATES

Mr. **Lehman**. I am still trying to reconcile Mr. Riley's break-even projection and your projection of $160 million profit and Conrail's projection of $160 million profit. Why is this so different?

Mr. **Berger**. I don't think it is a question of right or wrong. As we all know, words carry images and shapes with them.

Mr. **Lehman**. I meant cash flow, not profit.

Mr. **Berger**. I understand. I think that by saying something is break-even, you are conveying an image of a company that is border line and in trouble. That is, I think, what the words convey. I happen to believe that Conrail is a viable company which over the last five years has managed to produce positive cash flow, has managed to handle major changes in its environment, and is being well managed. I wish I could say the same for many of the other industrial companies in this country.

CONRAIL ABANDONMENT PLANS

Mr. **Lehman**. Mr. Riley also made the following statement at our March 12 hearing:

"I do not know what their abandonment plans are, but Dick Hasselman, the vice president of operations has recently talked about the need to shrink a stand alone Conrail to an 8,000 or 9,000 mile system over the long run, and that is a very catastrophic figure.

"That means that to stand alone, if you do not fix the problem with those north-south routes, Conrail will have to abandon another 4,000 or 5,000 miles of service, and Mr. Chairman, we are unwilling to sell that railroad in a way that does not fix the structural problem."

Do U.S. Railway Association's studies confirm the need to abandon another 4,000 or 5,000 miles of track? And is that your understanding of what Conrail plans to do?

Mr. **Berger**. Congressman, this is the first I have ever heard of this plan. I have never heard of this from Conrail. It has never been part of viability studies, and has not been included in our judgment, so I really don't know what Mr. Riley is talking about.

Mr. **Lehman**. If Conrail did have to abandon another 4,000 or 5,000 miles, do you agree with Mr. Riley that this would be catastrophic for the Northeast?

Mr. **Berger**. Hypothetically, obviously if the business was there, and the Northeast needed the trackage, to abandon it would not only be catastrophic for the Northeast, but for the railroad. On the other hand, if in fact there was no traffic, if in fact you had a catastrophic economic condition in the Northeast, then no one would expect the railroads to continue to operate losing lines. But in all honesty, it is a hypothetical discussion, Mr. Chairman, which I am having difficulty dealing with professionally.

Mr. **Coughlin**. Thank you.

I hope you don't mind if I jump in.

Mr. **Lehman**. No, this is your railroad.

Mr. **Coughlin**. You are saying that you have never heard Mr. Hasselman's statement about the need to shrink the railroad to 8,000, 9,000 miles?

Mr. **Berger**. No.

Mr. **Coughlin**. In all your studies with U.S. Railway Association you have never heard of that?

Mr. **Berger**. None of our staff has seen that from Conrail. Most of them are here.

Mr. **Coughlin**. That is about a 15,000 mile system now, right?

Mr. **Berger**. I think that is route miles. The question is whether we are talking about either route miles or track miles.

Mr. **Coughlin**. What is the difference between a route mile and a track mile?

Mr. **Berger**. There are surplus double multiple tracks. None of our staff has heard about this, Congressman. I have not heard about this before, and don't know whether we are talking route miles or track miles.

Mr. **Coughlin**. He says they would have abandoned another 4,000 to 5,000 miles of service. That is what he is quoted.

Mr. **Berger**. That sounds like route miles. No sir, I have never heard about it before.

Mr. **Coughlin**. I guess I would ask if you would please look into that and——

Mr. **Berger**. Absolutely.

Mr. **Coughlin**. And respond to the committee by letter or something. That is obviously a fairly major——

Mr. **Berger**. Yes sir, I agree. If it were true, it clearly would be major. We will look at it for you and get back to you quickly.

Mr. **Coughlin**. Thank you, Mr. Chairman.

[The information follows:]

United States Railway Association
955 L'Enfant Plaza North, S.W.
Washington, D.C. 20595
(202) 488-8777
Stephen Berger
Chairman of the Board

April 18, 1986

The Honorable Lawrence Coughlin
U.S. House of Representatives
2467 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Coughlin:

At yesterday's hearing before the House Appropriations Subcommittee on Transportation, I was asked to comment on a statement made by Federal Railroad Administrator Riley that Conrail "has recently talked about the need to shrink a stand-alone Conrail to an 8,000 or 9,000 mile system over the long run, and that is a very catastrophic figure." As part of my response to that question, I indicated that neither I nor the USRA staff was aware of any factual basis for Mr. Riley's assertion that Conrail was planning the four to five thousand miles of line abandonment that would be required to reduce its system to eight or nine thousand route miles.

I am informed that during a subsequent hearing before the Subcommittee yesterday afternoon, the Deputy Secretary of Transportation, Mr. Burnley, indicated that the statement Mr. Riley was referring to was contained in an editorial that appeared in the December 1985 issue of Modern Railroads. Both I and the USRA staff are, of course, familiar with the Modern Railroads editorial, but we had thought that the Department of Transportation was well aware that the author of the editorial had emphatically stated that neither the editorial nor the interview with Conrail upon which the editorial was based could be used to support an allegation that Conrail saw a need to abandon four to five thousand route miles.

The Modern Railroads editorial was written by one of its editors, Carl H. Wesselmann, following conversations he had with Mr. Stanley Crane and Mr. Richard Hasselman during an inspection trip over Conrail. The editorial summarized a comment of Mr. Crane's in the following paragraph:

> Meanwhile, the effort remains to get the lines down to a core system, somewhere within 8,000 to 9,000 miles. It is a policy that all the major railroads have adopted to some extent, while it helps contribute to a hazy financial

> future for some of the lessor [sic] roads but seems to open the opportunities for short lines. (See Attachment A)

The Department of Transportation first used the statement in the Modern Railroads editorial in a letter of January 16, 1986, from Secretary Dole to Senator Paul Simon, which read in part:

> Conrail cannot continue indefinitely to shrink itself into solvency, and a stand-alone Conrail can do little in the face of declining volumes other than curtail service and lay off employees. This painful truth is acknowledged by two senior officials of Conrail in an interview in the December, 1985 issue of Modern Railroads. As the article summarizes their plans, "the effort remains to get the line down to a core system,somewhere within 8,000 to 9,000 miles" from the present system of 13,400 miles. Such massive cuts would also mean huge reductions in service to shippers and the loss of thousands of additional jobs. (See Attachment B)

The January 16 letter prompted Mr. Wesselmann to write to Secretary Dole as follows:

> Reference your January 16th letter to Senator Paul Simon regarding the sale of Conrail: Regarding 4th paragraph of letter which states: "Conrail cannot continue indefinitely to shrink itself into solvency, and a stand-alone Conrail can do little in the face of declining volumes other than curtail service and lay off employees. This painful truth is articulated by two senior officials of Conrail in an interview in the December, 1985 issue of Modern Railroads. As the article summarizes their plan '... the effort remains to get the lines down to a core system, somewhere within 8,000 to 9,000 miles, from the present system of 13,400 miles. Such massive cuts would also mean huge reductions in service to shippers and the loss of thousands of additional jobs.'" I wish to confirm correct interpretation of Conrail's route mileage in my editorial in the December issue of Modern Railroads. Figure of an eventual 8,000 to 9,000 core miles is in reference to railroads' mainlines only, not to the planned total system (about 13,400 miles today). Our

> subscribers understand that further line abandonment by Conrail in the future would be minimal. (See Attachment C)

Mr. Wesselmann also submitted a letter to the editor of Traffic World, which in its January 27 issue had reported on Secretary Dole's letter to Senator Simon, including that letter's reference to Mr. Wesselmann's editorial. Mr. Wesselmann's letter to Traffic World read as follows:

> The reference to my editorial in the December issue of Modern Railroads (Traffic World, January 27, page 28) in which the question of Conrail's "core system" is produced as "evidence" of its intention to abandon almost half of its overall system is indicative of the Department of Transportation's desperation on the issue of the railroad's sale.
>
> In my discussion with Messrs [Stanley] Crane and [Richard] Hasselman the figure of 9,000 miles was offered as a reasonable estimate of Conrail's basic system as it appears to be shaping up. No mention was made of further abandonments of track nor any comment offered which would lead one to conclude that 9,000 miles would ultimately comprise Conrail's total system.
>
> For DOT then to leap to the conclusion that Conrail plans to loop off the rest of its trackage -- some 5,000 miles -- is obviously a red herring argument designed to bring labor into its camp. An ironic point about this "issue" is that Norfolk Southern obviously would not eschew track abandonment to some extent with respect to Conrail should it succeed in the merger. (See Attachment D)

In light of these unequivocal statements by Mr. Wesselmann, I had assumed that the Department of Transportation was aware that the Modern Railroads editorial could not be used as a factual source for an assertion that Conrail was planning to abandon itself to an eight or nine thousand route mile system.

Returning to the substance of the question that I was asked at yesterday's hearing, the answer I gave stands: neither I nor USRA staff are aware of any plans by Conrail to abandon another 4,000 to 5,000 route miles of lines. Before yesterday's hearing, USRA staff confirmed with Conrail that it remains the case, as we had been told throughout the last year, that such action is not contemplated in Conrail's 5-year plan or its 1986 budget.

Sincerely,

Stephen Berger

Attachments

cc: Honorable William Lehman

Attachment A

Writing the Rails

by Carl H. Wesselmann

On board with Mr. Crane

When the invitation came all other "urgent" matters were easily shunted aside.

Would I care to join Mr. Crane and others on a line inspection trip to Pittsburgh?

Care? Is Reagan a Republican? Is the Pope Catholic? Can Gorbachev speak Russian?

One scarcely needs only the flimsiest excuse to get out of the office these days. But when the chance comes to stop the editorializing momentarily and actually become involved, however briefly, in a phase of operations, a second invitation is most definitely not required.

Taxpayer is the hero

It began at Chicago's Union Station at a feeble hour in the morning. Conrail Chairman L. Stanley Crane's special train included the business car and a "theatre" car. The latter featured banked seating and a huge picture window that commanded a spectacular view of the track as we sped along.

All hands were restored with warming coffee that never seemed to stop flowing. Actually, this was a kind of theme for the one-day trip since the track, mirror-smooth and seamless, seemed also to pour out from beneath the wheels. Among those also on board were R. B. Hasselman, senior vice president, operations, industry legend Jervis Langdon, and Tom Shedd, editorial director of *MR*.

The trip was no idle joy ride; rather it was one of a regularly scheduled *working* series in which Mr. Crane literally keeps in touch with his railroad. The line was the old New York Central's "waterlevel" route through South Bend, Cleveland, southeast to Alliance and into Pittsburgh—the top western leg of Conrail's crucial "X."

The utter smoothness of the track stands in sharp contrast to the bouncy, swerving ride of the Conrail trains of nine years ago, as depicted in a famous movie. This time, the beauty of the rail line seemed a fitting cap to the railroad's odysses from those shakey beginnings in 1976 to its feisty image now from outcast to prized property. Of course, it must not be forgotten that it was the taxpayer who was the hero in this scenario of rehabilitation. Still, there is no question that it was money well spent when the number of jobs saved is considered together with the retention of rail services in a vital transportation area.

Even so, Crane and Hasselman were keenly aware of the work that remains. Here and there pockets of mud-clogged roadway, flagged for repair, were pointed out by division superintendents who joined the group as the train entered each's territory. Conrail has three high-productivity continuous-action tampers that figure to get workouts in these projects.

Someone noted the low amount of westbound traffic, but Mr. Hasselman pointed out that this is the rule on Mondays and that the trains will pick up to a constant flow on Tuesday. The line, in fact, has been so busy that it has served partly to downgrade the old Pennsy Ft. Wayne route to the south, a fact that prompted Mr. Crane to comment on Conrail's future.

It is important, he said, that the railroad's status be settled one way or another and soon. He reaffirmed his belief that merger with Norfolk Southern is the least desirable solution, but that continued operation under government ownership is almost equally intolerable. After all this time, he stated, Conrail should be given the chance to operate independently.

Meanwhile, the effort remains to get the lines down to a core system, somewhere within 8000 to 9000 miles. It is a policy that all the major railroads have adopted to some extent, while it helps contribute to a hazy financial future for some of the lessor roads but seems to open the opportunities for short lines.

With the latter, Crane was satisfied that relations have been greatly improved, especially with respect to

the bitter boxcar deregulation dispute of the recent past. The versatile short lines have, in several important instances, he stated, "relieved" Conrail of maintaining uneconomic routes by taking them over and serving as feeders of traffic for the trunk lines.

Railroading's major problems of efficient operations and profitable marketing of services are more understood now than at anytime in its past, he insisted. The tools of technology are also on hand to help personnel keep themselves and their systems sharp. If the industry then finally yields to its competitors, he concluded, it should be because its time has past and not because it refused to improve.

The next several years will be critical for Conrail and the railroad industry, insisted Stan Crane. In this period it should pretty well be confirmed whether or not the carriers as a whole can come to grips with their service and reliability problems together with their unit costs.

Conrail's much improved plant is only a first step. Essentially, it has brought the railroad to a level with most of the other major railroads and to a point where it remains for all in the industry now to justify their place in the transportation picture.

The excuses for declining market share seem to be running out. The railroads must now demonstrate that, like Conrail, they believe in a future worth preparing for.

Attachment B

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JAN 16 [illegible]

The Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Paul:

Thank you for your letter concerning the sale of Conrail to Norfolk Southern and your preference for a public stock offering. I have reviewed the many factors involved in such a complex transaction and firmly believe my choice of Norfolk Southern will, over the long term, most benefit shippers, employees, and taxpayers. Let me review some of my reasons for choosing Norfolk Southern.

The Norfolk Southern will provide Conrail's employees and shippers the best possible assurance of long-term survival and stability. A Norfolk Southern-Conrail combination is far stronger financially than Conrail standing alone. It brings Conrail better routes, more volume and a better chance of surviving future economic down-turns without cutting service and sacrificing jobs.

For all of its book profits, Conrail has marginal cash flows. Conrail estimates $440 million in net income for 1985. But that is a misleading figure. We should be concerned about cash flow, which properly reflects deductions for expenditures necessary to preserve the service viability of the railroad. Conrail estimates that its cash balance increased by only $64 million by the end of 1985. In reaching that figure, however, Conrail liquidated more than $60 million worth of property. Conrail also economized by eliminating about 2,400 employees, and scheduled more than 500 miles of line for potential abandonment. That was an extraordinarily painful price to pay, particularly in a year of general prosperity.

Conrail cannot continue indefinitely to shrink itself into solvency, and a stand-alone Conrail can do little in the face of declining volumes other than curtail service and lay off employees. This painful truth is acknowledged by two senior officials of Conrail in an interview in the December, 1985 issue of Modern Railroads. As the article summarizes their plans, "the effort remains to get the line down to a core system, somewhere within 8,000 to 9,000 miles" from the present system of 13,400 miles. Such massive cuts would also mean huge reductions in service to shippers and the loss of thousands of additional jobs.

Attachment C

THIS TELEGRAM IS COPY OF MESSAGE SENT TO HONORABLE ELIZABETH H DOLE.....

REFERENCE YOUR JANUARY 16TH LETTER TO SENATOR PAUL SIMON REGARDING THE SALE OF CONRAIL: REGARDING 4TH PARAGRAPH OF LETTER WHICH STATES:

"CONRAIL CANNOT CONTINUE INDEFINITELY TO SHRINK ITSELF INTO SOLVENCY, AND A STAND-ALONE CONRAIL CAN DO LITTLE IN THE FACE OF DECLINING VOLUMES OTHER THAN CURTAIL SERVICE AND LAY OFF EMPLOYEES. THIS PAINFUL TRUTH IS ARTICULATED BY TWO SENIOR OFFICIALS OF CONRAIL IN AN INTERVIEW IN THE DECEMBER, 1985 ISSUE OF MODERN RAILROADS. AS THE ARTICLE SUMMARIZES THEIR PLAN"... THE EFFORT REMAINS TO GET THE LINES DOWN TO A CORE SYSTEM, SOMEWHERE WITHIN 8,000 TO 9,000 MILES, FROM THE PRESENT SYSTEM OF 13,400 MILES. SUCH MASSIVE CUTS WOULD ALSO MEAN HUGE REDUCTIONS IN SERVICE TO SHIPPERS AND THE LOSS OF THOUSANDS OF ADDITIONAL JOBS." I WISH TO CONFIRM CORRECT INTERPRETATION OF CONRAIL'S ROUTE MILEAGE IN MY EDITORIAL IN THE DECEMBER ISSUE OF MODERN RAILROADS. FIGURE OF AN EVENTUAL 8,000 TO 9,000 CORE MILES IS IN REFERENCE TO RAILROAD'S MAINLINES ONLY, NOT TO THE PLANNED TOTAL SYSTEM (ABOUT 13,400 MILES TODAY). OUR SUBSCRIBERS UNDERSTAND THAT FURTHER LINE ABANDONMENT BY CONRAIL IN THE FUTURE WOULD BE MINIMAL.

CARL H WESSELMANN, EDITOR, MODERN RAILROADS
SUITE 150
2250 E DEVON
DES PLAINES IL 60018

NNNN
1942 EST

WU MOD PHA

Attachment D

Conrail Sale 'Desperation'

Park Ridge, Ill. 60068

The reference to my editorial in the December issue of *Modern Railroads* (*Traffic World*, January 27, page 28) in which the question of Conrail's "core system" is produced as "evidence" of its intention to abandon almost half if its overall system is indicative of the Department of Transportation's desperation on the issue of the railroad's sale

In my discussion with Messrs. (Stanley) Crane and (Richard) Hasselman the figure of 9,000 miles was offered as a reasonable estimate of Conrail's *basic* system as it appears to be shaping up. No mention was made of further abandonments of track nor any comment offered which would lead one to conclude that 9,000 miles would ultimately comprise Conrail's total system.

For DOT then to leap to the conclusion that Conrail plans to lop off the rest of its trackage—some 5,000 miles—is obviously a red herring argument designed to bring labor into its camp. An ironic point about this "issue" is that Norfolk Southern obviously would not eschew track abandonment to some extent with respect to Conrail should it succeed in the merger.—CARL H. WESSELMANN. *Editor, Modern Railroads, 2020 West Oakton.*

Feb.17, 1986

NORTH-SOUTH ROUTE WEAKNESSES

Mr. **LEHMAN**. Mr. Riley maintains that selling Conrail to the Norfolk Southern will solve a structural weakness in Conrail's route system that will alleviate the need for future abandonments. He says that Conrail has very good East-West routes, but very poor North-South routes. And that the Norfolk Southern merger would strengthen those North-South routes. Does Conrail in fact have a structural weakness on its North-South lines that will cause it to keep cannibalizing its system?

Mr. **BERGER**. Well, I suppose that that could be characterized in one of two ways. One could characterize that as Norfolk Southern helping Conrail, or as Conrail helping the Norfolk Southern where it has weak routes.

I think that the routes are there today. There might be economic ways they could make arrangements—they do arrangements now in the same way that Conrail and CSX and Conrail and other people make route arrangements. It comes to some extent to what I said at the beginning of my testimony, which was that this is one of the key pieces on which the Congress has to make a judgment on public policy. This is what you are talking about, about why this is such a perfect fit for the Norfolk Southern. You really create a new monopoly, through the proposed combination, in both ends of the system, which creates great market power. That is what everybody should understand.

Mr. **LEHMAN**. Just to be clear, Conrail East-West routes are much stronger than the North-South routes; and the North-South routes are weaker to the point where there will be abandonments.

Mr. **BERGER**. No. I think that there are a series of complications on the North-South routes, and that there are some real cost issues on these routes. I think Conrail has rationalized the North-South routes at this point to where they are in fact producing reasonable return.

On the subject of Conrail maintaining those North-South routes, I think that you can work around several factors. One is the very high cost on the corridor, which would affect anybody running North-South routes. That is number one. Secondly, there are the historic divisions that have existed between the Southern and Eastern districts. These have produced disadvantages for the Eastern district in terms of their revenue sharing, and that has been a piece of the problem, which also complicates this discussion about after Norfolk Southern buys Conrail, who gets helped on the North-South routes.

If you would like, we could give you a short memo on that, because I think the issue of how people get helped on North-South traffic in such a merger has got to be seen in the light of divisions—which side of the box you put revenues in, and which side you put the costs.

NORTH-SOUTH TRAFFIC DIVERSIONS

Mr. **LEHMAN**. Mr. Riley also told us that the Norfolk Southern-Conrail merger will result in an additional $100 million per year in traffic volume on Conrail lines. I believe he said that most of this additional traffic would be from diverted truck traffic along the Northeast corridor. Do your studies show the same results?

Mr. BERGER. Well, we can't really make a statement. In fact we discussed that with Norfolk Southern staff, and both U.S. Railway Association and Norfolk Southern staff agreed there was no real data available on which to make that assumption, and we have not been able to obtain from FRA any justification for that figure.

As I pointed out a few moments ago, saying that something is going to add $100 million in traffic is not necessarily the same as saying that you are going to add any net income from that movement.

Mr. LEHMAN. Assuming that a Norfolk Southern-Conrail merger would indeed generate $100 million more per year in revenue, what percentage increase in total Conrail revenues does this represent? And how important would such revenues be in assuring Conrail's long term viability?

Mr. BERGER. Well, it would be about three percent, Mr. Chairman. As I say, it has nothing to do with net income. I don't think it has any impact on viability, and I also think that one does not know whether it would produce any net benefits to Conrail.

I said before when you talked about the way divisions are set up, about which part of the new system you would allocate to cost and revenues, that there is no way to look at just the $100 million number to see whether it would add anything to Conrail's bottom line.

Mr. LEHMAN. Mr. Wolf.

Mr. WOLF. I have no questions, Mr. Chairman.

Mr. LEHMAN. Whenever you do have, just ask me to yield.

NORTH-SOUTH RATE DIVISIONS

Mr. COUGHLIN. You are saying $100 million in additional revenue wouldn't necessarily result in any additional improvements?

Mr. BERGER. Not necessarily, sir. Let's go back and take a look at the history of divisions. Historically, this has been a problem for the Northeast—for the whole Eastern district. If the way the divisions break is such that that $100 million revenue does not cover the costs of that movement, but if in fact the profitable whole is in the other district, then it merely adds revenue of $100 million. This may in fact add a net profit, it may be a valuable addition to a connecting railroad—in this case a connecting parent—but it might not be in and of itself an addition to the Conrail cash flow. That depends on how you put the books together.

WESTERN RAILROAD MERGER

Mr. COUGHLIN. Thank you, Mr. Chairman.

Mr. LEHMAN. If Conrail is not sold to the Norfolk Southern, do you believe that a Western railroad would be interested in buying it?

Mr. BERGER. I believe what I have said to you before, last year, that I thought there is a process taking place where the industry is moving from a totally regulated environment to one where profit and intelligent management are parts of it.

One of the most troubling parts of the country still remains the Midwest, where sorting out has to take place. This transaction between Norfolk Southern and Conrail would trigger some of that sorting out. I think what I said is that the next stage is important. Secondly, there needs to be a settling out of Western railroads. There have been major mergers. It was my judgment that if I was able to construct an ideal plan, that ideal plan for this country, from a public policy point of view, would be to see a sorting out of the Midwest problem and the strengthening and the shaking down of major mergers in the West. And then I said I would expect to see, after that took place, that pattern begin to look across the Mississippi. Then you would begin to see the Western railroads looking at the major carriers in the East, and I thought that at that point one might in fact begin to see a move toward transcontinental railroad purchases.

Mr. **Lehman**. More than one?

Mr. **Berger**. More than one. I don't think there would only be one. I think it is like the appearance of soap operas on television: if you have one you are going to have a bunch. I think you would have the same in this situation.

From a rational planning point of view, that, in my judgment, might be the best solution. I think at this point it is fair to say that the Western railroads are still very concerned with sorting out the West. As Congressman Durbin mentioned—both he and I heard the same things—Western railroads have real concerns about this transaction and how it will impact on the national rail system, but I don't think they are in a position now to make a major move.

Mr. **Lehman**. What are the advantages and disadvantages of a Western railroad owning Conrail?

[The information follows:]

The disadvantages of any particular western railroad owning Conrail would best be commented on by the other western railroads, and USRA has not conducted a study of this question. As to the advantages, they are somewhat a function of what alternatives you are comparing to. For example, there would certainly be fewer anticompetitive effects and dislocations of third parties as a result of a western merger compared with a Norfolk Southern/Conrail merger. Similarly, Conrail would be strengthened by a western merger in a way which would not occur in the case of a public offering of Conrail stock.

CONRAIL TRAFFIC PROJECTIONS

Mr. **Lehman**. Mr. Riley also points out that, despite projections to the contrary, Conrail's traffic has continued along its historical trend line of long term decline. He said, and I quote:

"Over the last 20 years, Conrail's freight volume has declined an average of 3.6 percent a year, and there is no end in sight . . . Last year's decline continued at a rate far in excess of the historic rate, and that is what forced the company to take such a heavy toll on employees, service, and equipment in the last year, to continue to break even despite the decline in volume."

Would you agree with Mr. Riley's bleak assessment? And what traffic trend do you predict for the future?

Mr. **Berger**. Well, I listened to the statistics as you read them to me, of course. Maybe when I retire I will write a book on the use of statistics in the search for the truth.

The fact of the matter is that if you look at what I said before, if you look at what has taken place in the railroad industry over the past four to five years, and if you look at Conrail and Conrail's decline—especially between '84 and '85, when there was a rate of decline in the entire industry—Conrail's rate of decline was less than the industry's as a whole.

I think that Conrail, if you look at the traffic data, has had traffic running in between roughly 180 and 190 million tons over this period. I think that the focus on traffic in and of itself is misleading in terms of the economic health of the railroad.

Mr. **Lehman**. If you ship electronic equipment by railroad, you are shipping a lot more valuable things than coal.

Mr. **Berger**. And beyond that, Mr. Chairman—I agree—beyond that you have to look at each movement and you also have to look at the other side of the ledger, at the cost control and at the management of margins. I think that this is one of the things that has become a matter of emphasis for Conrail—we used to call it productivity—in the last five years. If you look at some of the reports that USRA has issued, which hardly is as important as the action taken by Conrail since '80, we both agree that cost controls and operating margins are crucial determinants. They build and manage a system to maximize around those two notions. If you look at what Conrail has managed to do, given a period in which we have had a deep recession, a period in which we have had major fluctuations and major changes in economic activity, a period in which interest rates fluctuated enormously, what Conrail has done is managed its business extraordinarily well through a very difficult time for the American economy, and is at the point of being a case study in management for a lot of people.

CONRAIL EMPLOYEE AND SERVICE LEVELS

Mr. **Lehman**. Has this management caused a heavy toll on employees, service, equipment last year as Mr. Riley indicates?

Mr. **Berger**. If you ask whether or not Conrail has reduced employment on the railroad, the answer is absolutely yes. That was due to a fundamental weakness in the system that we had constructed, which everyone—including the Congress, labor unions, management, states and cities— came to grips with in '80–'81. We had all failed to face the issue of dealing with a level of staff that was well beyond what the railroad needed to operate. The Congress finally stepped in to help protect those individuals who were absolutely not needed on the railroad. This was a major act that Congress took and it enabled Conrail to turn itself into a normal, regular railroad system. The single most important political act that was taken by the Congress was when it finally crossed the line which said that the railroad ought not to be forced to carry employees who have no benefit to it as a company.

I think we have seen stabilization. We have seen that Conrail is now operating like every other railroad, managing the business reasonably well, and making capital investments as other railroads make capital investments.

Mr. **Lehman**. How about the service and equipment impacts he mentions?

Mr. **Berger**. Let me say, as someone whose port is served solely by Conrail, that I talk to shippers and talk to people in my region, and I hear no complaints. I don't know anybody who has heard complaints about the quality of service of Conrail in the last several years.

USRA FORECASTING ACCURACY

Mr. **Lehman**. Mr. Riley also told us that every report that has been issued on Conrail by the U.S. Railway Association has proven to be wrong on the high side by a very substantial margin. Would you please comment on this—why have your estimates been so far off?

Mr. **Berger**. I would like to deal with the history of the business before '80. Before '80 it is clear that everyone who was looking at Conrail—that included U.S. Railway Association, FRA, congressional committees—all took an approach to the Conrail problem which was extraordinarily optimistic. That began the concentration on traffic volumes that everybody projected.

When I came to USRA I was stunned by it. We had lived in the world of the hockey stick where if things are going down today, tomorrow they will go up. Everybody who had been involved in that initial stage of chaos that had been created by the bankruptcy of the railroads in the Northeast looked forward to the day where it would go all the way back to what it had been.

Some of us who lived through the crisis in the Northeast knew it would never go back, that it would be different, it would change, and in a sense, I suppose, that was the perspective that I brought. Just having lived through New York City's fiscal crisis, I came down and said that things will change, that they don't have to go back to get better, and I began work with the Congress. We then began to craft an approach whose output, and your output—both the Staggers Act and NERSA—said, "Let's create a system which truly matches the modern world".

I think if you look at reports from '80 on—if you look at the five year period, I think you will see that the U.S. Railway Association reports have been very accurate, in terms of Conrail's performance. That is because we did not try to predict either just traffic or revenues. We tried to predict the performance of the company. I think we have been reasonably accurate in terms of predicting the performance of Conrail.

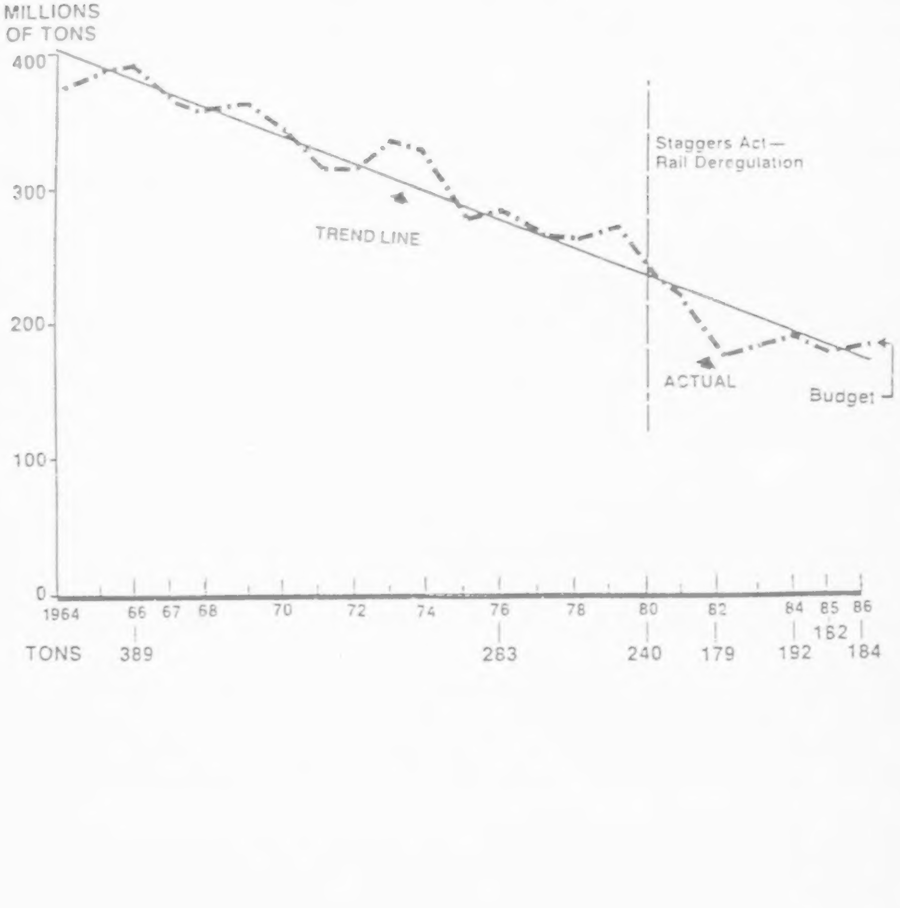
But I think we had to turn around. I, this Congress, all of us, had to turn around the notion that you are going to have to have "X" hundred million tons on a railroad that is in the Northeast. It has got different kinds of traffic. That, I think, was the bridge we all crossed with both Staggers and NERSA.

CONRAIL TONNAGE

Mr. **Lehman**. Please update for the record the Conrail tonnage graph found on page 656 of last year's hearing record.

[The information follows:]

ANNUAL FREIGHT TONNAGE
Period From 1964-1986



Mr. **Lehman**. We are going to recess to vote. We will come right back.

[A short recess was taken.]

MORGAN STANLEY USE OF CASH RESERVES

Mr. **Coughlin** [presiding]. The Chairman suggested we proceed. We are on the Morgan Stanley bid critique.

In assessing the Morgan Stanley bid, Mr. Riley gave us several reasons why it was inferior to the Norfolk Southern offer. I would like to get your comments on each.

First, Mr. Riley says Morgan Stanley would take $240 million out of Conrail's cash reserve to pay for their deal. He believes this is unacceptable because it would lower Conrail's cash reserves to a point just above the minimum needed to retain service for a 90 day period. Would Conrail's cash reserves be too low in your estimation, under the Morgan Stanley offer?

Mr. **Berger**. Congressman, I just want to repeat what I said to the committee last year—that I have felt that the level of $250–$300 million was in fact an acceptable level of cash for the corporation. I would like to say that that should not be taken as a comment in support of the Morgan Stanley offer. It is just to say that as an across the board issue.

Mr. **Coughlin**. What would their cash reserve be if you took $240 million in cash out?

Mr. **Berger**. At this point, $500 million or so.

Mr. **Coughlin**. Reserves are now $500 million?

Mr. **Berger**. Reserves are now approximately $950 million, at this point.

Mr. **Coughlin**. And so a level of $250 million you feel would be adequate?

Mr. **Berger**. I think I would be comfortable if you had $300 million. If you took $240 million, Conrail would still have over $600 million. I really question how much is an acceptable level of cash.

Mr. **Coughlin**. Two hundred fifty million?

Mr. **Berger**. Three hundred, two to three hundred. I would certainly be happy at $300 million.

MORGAN STANLEY CAPITAL INVESTMENT PLANS

Mr. **Coughlin**. Mr. Riley also says that Morgan Stanley would cut Conrail's capital investment by 21 percent in 1986 in order to pay its dividends. He says that Norfolk Southern would invest $130 million more in the Conrail capital improvements than Morgan Stanley. How would these capital investment plans compare to the covenant negotiated by Secretary Dole? And have you seen any indication that Norfolk Southern actually plans to make this level of capital investment in Conrail?

Mr. **Berger**. No sir. I was answering the last question first. I don't know where the analysis comes from in terms of some of these numbers. There are none of the programs that I have seen that would violate the minimum level of covenants required by the Department of Transportation in terms of capital investment. But I think that it would be very hard to predict, and appropriately, what any competent buyer and competent manager is going to spend in each year.

I think what is required, and what we should want, either in terms of the transaction or if you were shareholders in the company, is that the railroad would spend what is absolutely necessary. The reinvestment plan ought to be shaped each year by what in fact the traffic and the particular wear and tear have been.

I think that is the way one ought to approach the requirement for capital investment. I think Conrail has planned in '86 to reduce their capital investment, as in fact had many other people, because there had been less pressure on the railroad. On the other hand, Conrail spent more last year than they originally planned. It was a decision made on how the shaping looked in that particular year.

Mr. COUGHLIN. What does the covenant require?

Mr. BERGER. Three hundred fifty million.

Mr. COUGHLIN. Of capital investment?

Mr. BERGER. Yes. Everybody is well above that in any of the numbers they are talking about.

Mr. COUGHLIN. Morgan Stanley, Norfolk Southern, they all would be——

Mr. BERGER. That is my understanding, yes.

MORGAN STANLEY DIVIDEND PLANS

Mr. COUGHLIN. Mr. Riley also maintains that a break-even Conrail cannot afford to pay $112 million in dividends that would be called for under the Morgan Stanley plan. Could Conrail afford to pay these dividends in your view?

Mr. BERGER. I want to make it clear that nothing I say constitutes in any way a judgment about the Morgan Stanley proposal itself. Frankly, if I was planning to do a public offering, Congressman, I would not have structured it the way the public offering proposals have been structured.

The public offerings have been structured to meet a set of conditions established by the Department of Transportation. I would have preferred to see a public offering proposal, which I would ask my financial advisors to put together, which would in effect be aimed at maximizing the return to the government and, within much broader parameters, to protect the public policy concerns.

Let me try to come to the question. I would like, at least to be fair, to deal with this on two levels:

First, I would like to be able to compare apples and apples. We are not just talking here about whether they can pay $112 million or not, we are talking about a public debate. All these questions which you have asked me from other people's testimony are loaded with a whole series of complications in terms of a large scale debate that has been taking place for a long time. I would like to try to compare apples and apples, if I can, in terms of what the railroads could or could not do under the Morgan Stanley or Norfolk Southern proposal—neither of which I am particularly interested in.

Under the covenants that now exist, for example, if Conrail was 100 percent owned by any corporation—either the one the Secretary chose or any of the others that had been bidders—there is no real requirement for that corporation to maintain a cash level or to put money into Conrail. It is totally possible that a sole owner could use the balance sheet and the cash in a variety of ways—not necessarily the issuing of a dividend, but as I mentioned before, questions about where and how you structure costs, where you place the cost on the balance sheet between the two corporations, and a variety of other things.

So I think the question has to be asked of all transactions, not just whether they can afford to pay dividends, but what the transactions will do in terms of how it will treat the cash and assets, the cash flow, of the company. I think this is a much more complicated question than is implied.

Now, secondly, I think that when you ask whether Conrail can pay a certain level of dividends——

Mr. LEHMAN. One hundred and twelve million dollars.

Mr. BERGER. Yes. I think what you are asking is whether Conrail or a new company would pay $112 million, whether it was prudent or imprudent to make that payment. My answer is, I hope not.

I look at the dividend issue and structure of the Morgan Stanley public offering, which triggers the first thing I said, which is that I wouldn't have structured a deal this way. There are many ways I would suggest, and there are two ways to get decent market value for Conrail. You can in fact create a market price, and build it around two ways of looking at it.

Some investors look to a company which in fact will pay large immediate returns, dividends; others look to a company in which you have long term major asset appreciation. How you get into either position depends upon how the company is managed and what its short and long term goals are. I don't know how the different managements would manage, what their decisions would be, or what amount of cash. I do know one thing, that none of the people we are talking about who are looking at Conrail have been known to be long term, tax exempt, charitable institutions. These are people who are interested in making money, whether it is Norfolk Southern or Alleghany Company or Allen & Company or Morgan Stanley.

When we look at the question of how much the price is, or how dividends are going to be paid or assets appreciated over time, what we have is marked evidence that here is an extraordinarily valuable property, which is worth more to whomever is putting numbers on the table, because otherwise they would be stupid businessmen. I do not believe that they are stupid businessmen in this case. I think that how and what in fact is produced in each of these offerings, for the potential purchasers, is different in each case. Different people are looking at different kinds of things.

All I suggest is that what we have here is, at least at the moment—there have been others previously—three series of bidders who look at Conrail in different ways, for different reasons, with different kinds of paybacks, as an extraordinarily valuable property which is available for purchase. When they have made their purchase, they intend to make a reasonable profit on their investment, which is what we all want them to do. Therefore, I suggest that the structurings, by whatever method—whether it is dividends in one transaction, whether it is asset appreciation in another, whether it is maximizing of revenues to a consolidated corporation in the third—that they are all different ways of skinning a cat. All of them are things that each of the purchasers believe can be done and continue to make the company grow and be more valuable.

PUBLIC OFFERING STRUCTURE

Mr. COUGHLIN. You have indicated you would not structure a public offering the way Morgan Stanley did, but I certainly missed how you would structure a public offering.

Mr. BERGER. I didn't say how I would structure a public offering. You haven't missed a thing. I think what you have on the table is Norfolk Southern's proposal. I think that to get into a long debate about the proper structuring of a public offering probably is not useful until the Congress makes a determination. However, I think there are a couple of things. I have said——

Mr. COUGHLIN. You might reflect on that determination.

Mr. BERGER. I have said before that if one accepts the principle that this is a viable corporation, with the historic pattern of the last five years plus the appetite of a large number of people to acquire it, then in fact we ought to take a look not only at the covenants but also some of the restrictions the Department of Transportation has put on the notion of a public offering. For example, the notion that the transaction has to take place in a single fell swoop is in fact the notion that we are a seller in a hurry, and therefore we would like to get that stock sold on day one, so then we can take a walk.

I have never thought that was necessarily prudent. I also thought there were a variety of ways one could do that. Maybe there is a combination of both some of the pieces and things people put on the table, and some other pieces of the package which some of us thought about, which might be useful. I think we could put together a group working with the Department, and the private sector, and some people who have been involved up to now, if in fact that became a real option. That is your call at this point.

Mr. COUGHLIN. I guess to make that call means we need to know what the alternatives are.

Mr. BERGER. I think it is clear just from some of the other things other people who have been here said—there is a market out there, that in fact there are purchasers, in both large and small denominations, who are willing to own a part of this railroad.

I think I have answered some questions you have asked me today about a public policy competitive issue. Policy must come first, because I think you can be confident in knowing there is another option. I think you have seen that you have a couple of them in front of you. If you decide you really want to pursue the public offering option, you would have plenty of people in here talking to you about it. I think that is clear from the evidence we have seen so far.

GUILFORD AND P&LE FINANCIAL STRENGTH

Mr. COUGHLIN. Let's turn to the Norfolk Southern divestiture plan.

On the other side of the ledger, those critics of the Norfolk Southern plan point to the proposed divestitures to the smaller regional railroads, such as Guilford and the Pittsburgh and Lake Erie. Many people question whether these railroads will ever be effective competitors to a combined Norfolk Southern Conrail. Would you first review for us the current financial strength of both Guilford and the Pittsburgh & Lake Erie?

Mr. BERGER. I think neither are very strong financially at this point. Both are going through serious testing at this moment, both financially and operationally. Neither could sustain themselves in the face of a Norfolk Southern/Conrail merger. I testified before about some questions we are now asking to try to determine whether or not they could sustain themselves through a merger. I think there is some question about that.

STATUS OF USRA DIVESTITURE REVIEW

Mr. COUGHLIN. I believe you are in the midst of making a detailed review of these divestitures for the authorizing committee. What is the status of that review and when will it be completed?

[The information follows:]

The Guilford review may be over very soon if we can get certain data questions answered quickly. However, our ability to write a report that provides final conclusions on the Guilford divestiture is dependent upon Guilford and NS completing their negotiations of certain portions of their agreement. These unresolved matters affect our ability to assess whether the divestiture would meet certain of the criteria imposed by the Justice Department.

Our P&LE review is essentially in suspense as a result of the unavailability of very important data. We have confirmed with the Justice Department that they and their consultants have no more information than we do. I would add that we are perplexed as to how a final P&LE conclusion could be reached even after these data are provided unless and until the debt agreement is restructured in a way which would permit new financing to be arranged to purchase the divestiture lines.

USRA DIVESTITURE EVALUATION CRITERIA

Mr. COUGHLIN. In looking at Norfolk Southern's latest divestiture plan, what are the major questions that come to mind in judging whether it cures the antitrust aspects of this merger?

[The information follows:]

At a very general level, we must evaluate first whether the divestitures create railroads which have a reasonable expectation of long-term financial viability. Secondly, we must examine whether, after the divestiture, competitive service will be provided in the problem markets identified by the Justice Department. The second question is in part answered by peeling back the layers of the analysis that answers the first question. In other words, even if the divestiture plans show that aggregate profitability, we have to ascertain whether the parts of the plan associated with serving the problem counties contribute to that profitability. If they do not, then we would not have assurance that the problem markets would in fact receive service from the divestiture carriers, and of course the divestiture agreements do not require service to those markets in the event it is found unprofitable by the carriers.

In answering both of these questions, the key underlying assumptions that we must evaluate in the carriers' plans are their traffic projections and their cost estimates. Evaluating these data is considerably more problematic than evaluating the budget for an existing operation. Frankly, we face some difficult questions as to how great a burden of proof the carriers should be required to uphold. Some of the estimates they had to make are by their own admission little more than committee judgments without any frame of reference. I am not prepared at this time to say how a problem such as that will affect the overall conclusion, because it will be only one of many factors considered.

GUILFORD AND P&LE SURVIVAL

Mr. **Coughlin**. Do you believe the Guilford and the Pittsburgh & Lake Erie will survive and prosper under the Norfolk Southern divestiture plan?

Mr. **Berger**. I can't answer that, Congressman. I certainly cannot give you a definitive yes.

Mr. **Coughlin**. I know the Justice Department is currently doing—I guess they have actually had it contracted out—their review of the divestiture plan?

Mr. **Berger**. That is correct.

USRA COORDINATION WITH JUSTICE DEPARTMENT

Mr. **Coughlin**. Are you prepared to and preparing to review the Justice Department reviews of the divestiture plan?

Mr. **Berger**. We are doing parallel studies, and our staff is talking with the Justice Department. We are in contact with them.

Mr. **Coughlin**. Because that is something we are certainly going to need when that comes out.

Mr. **Berger**. You will have independent review from us. I wouldn't say that we would be reviewing their plan. We will have our own review for you of the divestiture plan.

CBO ANALYSIS

Mr. **Coughlin**. Last February, the Congressional Budget Office reported to the Senate Appropriations Committee that the Norfolk Southern proposal would actually end up costing the Federal Government about $250 million by 1991. They say the $1.2 billion purchase price would be offset by losses of about $1 billion in foregone interest and dividend payments to the Treasury and about $500 million in lost tax revenues. Do you agree with CBO's analysis?

[The information follows:]

In June, 1985, the CBO provided to Senator Danforth an estimate of the budget impacts through fiscal year 1990 of the Norfolk Southern proposal versus the status quo. The letter described the methodology and key assumptions employed by the CBO in arriving at its estimate. The CBO estimate published in February 1986 extended the estimate of budget impacts through fiscal year 1991, but appears to employ the same assumptions and methodology as outlined in the June 1985 letter. The primary adjustments were a $200 million reduction in the purchase price, reflecting a better understanding of the excess cash computation required by the Memorandum of Understanding; an additional year of foregone interest and dividend payments to the Treasury; and an additional year of lost tax revenues. Any attempt to measure the budget impact of a Norfolk Southern-Conrail consolidation compared to retaining the Conrail status quo requires numerous complex assumptions concerning many key factors, such as the applicability of various Federal Income Tax doctrines, projections of Conrail's future earnings on a stand-alone basis, and projections of the effects on both Norfolk Southern's and Conrail's future earnings of implementing the proposed consolidation. The CBO's February 1986 estimate of budget impact is a reasonable application of the assumptions and methodology described in the June 1985 letter to the facts as we are aware of them today. A different result could be obtained by changing those assumptions.

CONRAIL NET INCOME

Mr. **Coughlin**. What was Conrail's 1985 net income, both including and excluding the special items such as state tax exemptions, and how did that compare with other class I railroads?

[The information follows:]

Conrail's reported net income for 1985 was $442 million. If you subtracted from that the effect of their state tax exemption and the federal payment of job protection expense, you get an adjusted figure of $387 million. This was lower than the net income for CSX, NS, and the Burlington Northern, the best of which earned $489 million. Conrail bettered the figures for Southern Pacific, Santa Fe, and Union Pacific, which ranged from $117 to $258 million.

CLASS I RAILROAD EARNINGS

Mr. COUGHLIN. Please provide for the record a ranked listing of 1983-84-85 earnings for class I railroads. Please show Conrail's earnings with and without the special terms.

[The information follows:]

NET INCOME FROM CONTINUING OPERATIONS MAJOR CLASS I RAILROADS, 1983-85

[In millions of dollars]

	1983	1984	1985
1. Burlington Northern	489	551	414
2. Norfolk Southern	489	485	362
3. (a) Conrail	442	500	313
(b) Conrail w/o[1]	387	415	134
4. CSX	405	432	201
5. UP System	258	253	197
6. Sante Fe	126	135	83
7. Southern Pacific	117	137	29

[1] Adjusted to add back wage concessions, state taxes, and tax benefit transfers. 1985 also adjusted for 701 and 702 payments.

Mr. COUGHLIN. Please also update for the record the Conrail net income and change in cash tables found on page 651 of last year's hearing record.

[The information follows:]

CONRAIL NET INCOME, 1981-86

[In millions of dollars]

	Budget 1986	Actual					1981-86 actual and budget
		1985	1984	1983	1982	1981	
Reported GAAP net income	422	442	500	313	174	39	1,890
Special items:							
State tax relief		33	30	20	30		113
Wage concessions			55	132	140	46	373
TBT sales				27	91	94	212
Passenger and other adjustments					44	(93)	(49)
Total, special items		33	85	179	305	47	649
GAAP net income without special items	422	409	415	134	(131)	(8)	1,241
Change from prior year of GAAP net income without special items	13	(6)	281	265	(123)		

CONRAIL CHANGE IN CASH, 1981–86

[In millions of dollars]

	Budget 1986	Actual					1981–86 actual and budget
		1985	1984	1983	1982	1981	
Change in cash	169	64	313	86	44	224	900
Special items:							
State tax relief		38	26	20	19	11	114
Wage concessions			55	132	140	46	373
TBT sales				14	107	107	228
Federal drawdowns						135	135
Wage restoration, retroactive payment		(69)	69				
Total, special items		(31)	150	166	266	299	850
Change in cash without special items	169	95	163	(80)	(222)	(75)	
Change from prior year of reported change in cash without special items	74	(68)	243	142	(147)		

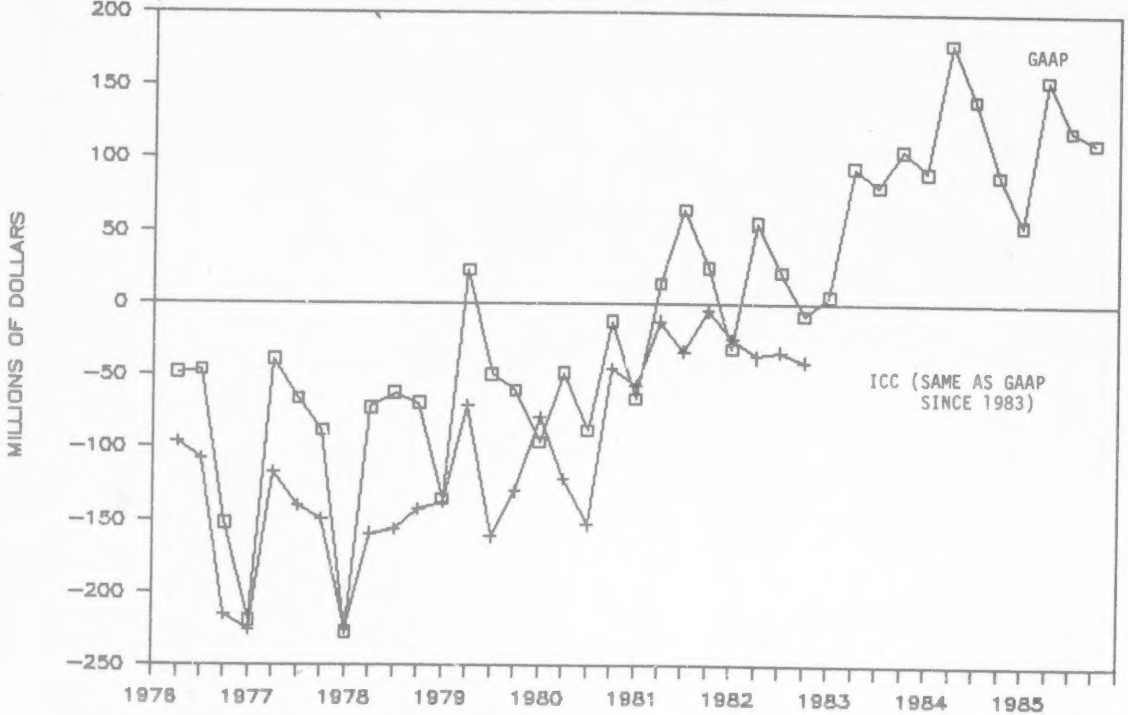
CONRAIL PROFIT AND LOSS HISTORY

Mr. COUGHLIN. Plese also update for the record the Conrail profit and loss graph found on page 653 of last year's hearing record.

[The information follows:]

CONRAIL QUARTERLY PROFIT & LOSS

GAAP & ICC 1976–1985



NOTE: Results for 1981-1983 exclude income from tax benefit transfers and other unusual non-operating items.

CONRAIL 1986 EARNINGS ESTIMATE

Mr. COUGHLIN. What earnings level has Conrail budgeted for 1986 and how confident are you that they will reach this level?

[The information follows:]

Conrail's 1986 budget calls for a net income of $422 million. USRA has reviewed the budget and found it reasonable. We have reached the same conclusion in similar reviews for the last four years, and have not been disappointed.

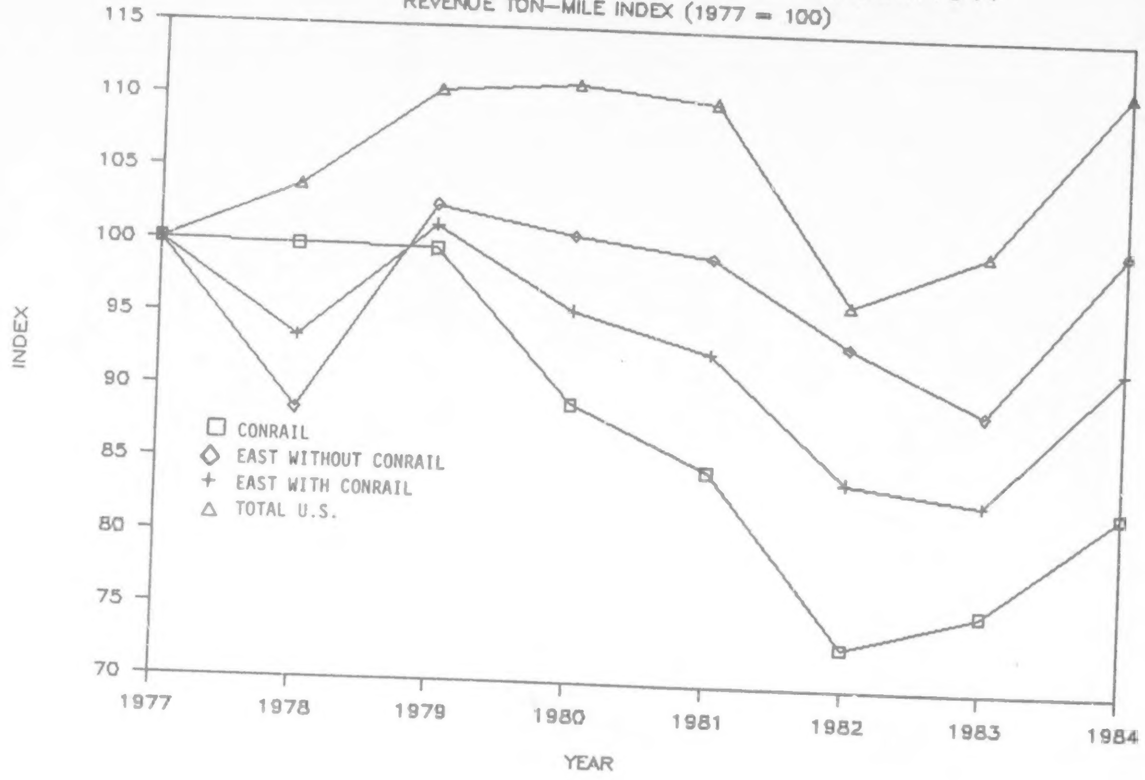
REVENUE TON-MILE INDEX

Mr. COUGHLIN. Please also update for the record the revenue ton-mile index graph found on page 658 of last year's hearing record.

[The information follows:]

UNITED STATES RAILWAY ASSOCIATION

REVENUE TON–MILE INDEX (1977 = 100)



CONRAIL TON-MILES BY COMMODITY

Mr. COUGHLIN. Please also update for the record the ton-mile data found on page 659 of last year's hearing record.

[The information follows:]

CONSOLIDATED RAIL CORPORATION TON-MILES FOR MAJOR COMMODITIES AS A PERCENTAGE OF TOTAL TON-MILES 1979–85

[In percent]

Commodity	1979	1980	1981	1982	1983	11984	1985
Farm Products	7.5	7.9	6.7	9.2	6.6	5.7	5.3
Metallic Ore	3.7	2.8	3.1	1.7	1.9	2.3	2.0
Coal	19.5	21.7	21.3	22.7	21.3	21.6	20.4
Non-Metallic Minerals	3.6	3.1	2.9	3.2	2.8	3.0	2.9
Food	10.6	11.5	10.8	10.5	9.6	8.9	9.6
Lumber	3.5	3.2	2.7	2.4	2.9	2.9	3.8
Pulp & Paper	6.9	7.0	7.2	7.6	7.1	6.5	6.2
Chemicals	10.9	11.1	11.6	11.9	13.0	12.8	12.9
Coke	1.5	1.8	2.5	1.4	1.7	1.7	1.8
Stone, Clay & Glass	3.1	2.8	2.7	2.4	2.3	2.2	2.3
Primary Metals	8.2	7.4	8.4	5.9	7.1	7.4	7.1
Transportation Equipment	5.3	4.7	4.1	4.3	5.3	6.0	6.2
Waste & Scrap	2.8	2.7	2.9	2.1	2.3	2.5	2.3
TOFC	8.4	8.7	9.1	10.8	12.4	12.9	14.1
All Other	4.3	3.8	4.1	4.1	3.9	3.6	3.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Total may not add due to rounding.

Source: Conrail.

CONRAIL CONSOLIDATED FINANCIAL STATEMENTS

Mr. COUGHLIN. Please also provide for the record a copy of Conrail's 1985 consolidated financial statements and notes.

[The information follows:]

CONSOLIDATED RAIL CORPORATION
AND SUBSIDIARIES

REPORT ON EXAMINATIONS OF
CONSOLIDATED FINANCIAL STATEMENTS
for the years ended December 31, 1984, 1983 and 1982

Coopers
&Lybrand

Certified Public Accountants

Coopers
&Lybrand

certified public accountants

The Board of Directors
Consolidated Rail Corporation
Philadelphia, Pennsylvania

We have examined the consolidated balance sheets of Consolidated Rail Corporation and subsidiaries as of December 31, 1984 and 1983, and the related consolidated statements of income, deficit and changes in financial position for each of the three years in the period ended December 31, 1984. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the consolidated financial position of Consolidated Rail Corporation and subsidiaries as of December 31, 1984 and 1983, and the consolidated results of their operations and changes in their financial position for each of the three years in the period ended December 31, 1984, in conformity with generally accepted accounting principles applied on a consistent basis.

COOPERS & LYBRAND

1900 Three Mellon Bank Center
Philadelphia, Pennsylvania
January 25, 1985

CONSOLIDATED RAIL CORPORATION
CONSOLIDATED BALANCE SHEETS, DECEMBER 31
(In Millions)

ASSETS	1984	1983
Current assets		
Cash and temporary cash investments	$ 846.0	$ 533.4
Accounts receivable, less allowances of $34.9 in 1984; $34.7 in 1983	494.2	485.9
Material and supplies	161.0	142.1
Other current assets	14.8	9.0
Total current assets	1,516.0	1,170.4
Investments in and advances to affiliated companies	33.9	37.0
Property and equipment, net	4,614.5	4,399.8
Other assets	72.0	95.6
Total assets	$ 6,236.4	$ 5,702.8

LIABILITIES AND STOCKHOLDERS' EQUITY	1984	1983
Current liabilities		
Accounts payable	54.9	58.9
Wages and employee benefits	257.6	189.8
Current maturities of long-term debt	120.3	115.8
Casualty reserves	110.0	111.7
Accrued and other current liabilities	386.3	383.3
Total current liabilities	929.1	859.5
Long-term debt, less current maturities	1,711.1	1,679.1
Casualty reserves, less current portion	80.7	97.1
Other liabilities	76.7	98.5
	1,868.5	1,874.7
Preferred stock with mandatory redemption (liquidation and redemption value in 1984, $2,554.6)	2,316.8	2,311.5
Preferred stock without mandatory redemption and common stock		
Series B preferred stock (liquidation value $1,587.0)	31.7	31.7
Common stock	29.4	29.4
Additional paid-in capital	1,613.6	1,644.8
Deficit	(548.3)	(1,043.5)
	1,126.4	662.4
Stock held by subsidiary	(4.4)	(5.3)
	1,122.0	657.1
Total liabilities and stockholders' equity	$ 6,236.4	$ 5,702.8

See accompanying notes.

CONSOLIDATED STATEMENTS OF INCOME
for the years ended December 31
(In Millions Except Per Share)

	1984	1983	1982
Revenues (1982 includes $618.0 from passenger operations)	$3,379.4	$3,076.4	$3,616.6
Operating expenses			
Way and structures	490.5	473.2	619.0
Equipment	775.9	771.0	910.9
Transportation	1,357.9	1,274.0	1,746.3
General, administrative and other	289.1	270.0	291.8
Total operating expenses	2,913.4	2,788.2	3,568.0
Income from operations	466.0	288.2	48.6
Other income, net	34.2	24.8	125.6
Income before income tax and extraordinary credit	500.2	313.0	174.2
Charge equivalent to federal income tax	27.8	14.9	
Income before extraordinary credit	472.4	298.1	174.2
Extraordinary credit resulting from utilization of net operating loss carryforward	27.8	14.9	
Net income	$ 500.2	$ 313.0	$ 174.2
Income per common share			
Income before extraordinary credit			
Primary	$ 17.46	$ 11.16	$ 6.82
Fully diluted	17.46	11.16	6.59
Net income			
Primary	18.50	11.73	6.82
Fully diluted	18.50	11.73	6.59

See accompanying notes.

CONSOLIDATED STATEMENTS OF DEFICIT
for the years ended December 31
(In Millions)

	1984	1983	1982
Balance, beginning of year	$1,043.5	$1,352.2	$1,522.8
Net income	(500.2)	(313.0)	(174.2)
Accretion to redemption price of Series A preferred stock	5.0	4.3	3.6
Balance, end of year	$ 548.3	$1,043.5	$1,352.2

See accompanying notes.

CONSOLIDATED STATEMENTS OF CHANGES IN FINANCIAL POSITION

for the years ended December 31

(In Millions)

	1984	1983	1982
Funds provided by operations			
Income before extraordinary credit	$ 472.4	$ 298.1	$ 174.2
Non-cash charges (credits)			
Depreciation and amortization	239.3	244.8	240.6
Charge equivalent to federal income tax	27.8	14.9	
Provision for casualty losses, noncurrent	(16.4)	(7.6)	12.7
Other, net	(20.0)	.6	16.6
	703.1	550.8	444.1
Changes in working capital			
Accounts receivable	(8.3)	34.2	202.6
Material and supplies and other current assets	(24.7)	32.6	62.1
Accounts payable	(4.0)	(14.8)	(24.0)
Wages and employee benefits	67.8	(36.5)	(36.4)
Current maturities of long-term debt	4.5	(5.3)	(39.1)
Casualty reserves	(1.7)	(2.6)	(10.7)
Accrued and other current liabilities	3.0	(38.2)	(98.9)
Total funds provided by operations	739.7	520.2	499.7
Funds provided by (used for) financing activities			
Issuance of long-term debt	156.8	117.7	54.0
Current portion of long-term debt	(124.8)	(126.4)	(168.3)
Redemption of 7.5% debentures		(3.5)	(60.6)
Other	.3	.3	12.1
Total funds provided by (used for) financing activities	32.3	(11.9)	(162.8)
Funds provided by (used for) investment activities			
Property and equipment additions	(555.7)	(454.7)	(367.0)
Sales and other property transactions	101.7	50.7	78.3
Other, net	(5.4)	(17.8)	(4.1)
Total funds used for investment activities	(459.4)	(421.8)	(292.8)
Increase in cash and temporary cash investments	312.6	86.5	44.1
Cash and temporary cash investments			
Beginning of year	533.4	446.9	402.8
End of year	$ 846.0	$ 533.4	$ 446.9

See accompanying notes.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

---

1. Summary of Significant Accounting Policies

Industry

Consolidated Rail Corporation was established by the Regional Rail Reorganization Act of 1973, as amended, to acquire, operate and rehabilitate rail properties of railroads in reorganization and certain other transferors in the midwest and northeast regions of the United States. Such properties were acquired on April 1, 1976. In accordance with the Northeast Rail Service Act of 1981 (NERSA), on December 31, 1982, the Company transferred its commuter service to regional authorities and most intercity passenger service to Amtrak (National Railroad Passenger Corporation). Such services were previously operated under agreements which entitled the Company to cost reimbursement.

Principles of Consolidation

The consolidated financial statements include the Company and its subsidiaries. Investments in 20% to 50% owned companies are recorded under the equity method; less than 20% owned companies are stated at cost.

Material and Supplies

Inventories are valued at the lower of cost, principally weighted average, or market.

Property and Equipment

Property and equipment are recorded at cost. Additions and renewals are capitalized and depreciated using the composite straight-line method. The cost (net of salvage) of depreciable property retired or replaced in the ordinary course of business is charged to accumulated depreciation and generally no gain or loss is recognized.

Pensions

Pension expense, based on normal costs and amortization of prior service costs over 30 to 40 years, is funded currently.

Accretion to Redemption Price of Series A Preferred Stock

Differences between mandatory redemption price and fair market value of Series A preferred stock issued in lieu of cash interest on 7.5% debentures are charged to deficit over the period to redemption.

Continued

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Continued

1. **Summary of Significant Accounting Policies** continued

Per Share Data

For 1984 and 1983, primary and fully diluted per share data are based on net income adjusted for accretion to the redemption price of Series A preferred stock and the average number of outstanding common shares and common share equivalents. Common share equivalents represent convertible preferred stock held by the Employee Stock Ownership Plan (ESOP), which, prior to 1983, were contingently issuable and therefore excluded from the computation of primary per share data.

2. **Property and Equipment**

	December 31, 1984	December 31, 1983
	(In Millions)	
Roadway	$4,036.6	$3,726.5
Equipment	631.1	656.3
Less: Accumulated depreciation	(755.2)	(648.4)
Allowance for disposition	(130.4)	(133.5)
	3,782.1	3,600.9
Capital leases (primarily equipment)	1,449.6	1,370.0
Less accumulated amortization	(617.2)	(571.1)
	832.4	798.9
	$4,614.5	$4,399.8

The Company applied to the Interstate Commerce Commission for permission to abandon approximately 4,000 miles of unprofitable rail lines under NERSA and, in 1981, recorded a provision to write down these facilities to estimated recoverable value. This provision was based on estimates which the Company continues to monitor. Where proceeds have varied from estimated recoverable values, differences have been included in the allowance pending completion of the disposition process.

3. **Credit Agreement**

The Company maintains a $100 million unsecured revolving credit agreement with a group of banks for a nominal annual fee. Interest on each borrowing will not exceed the prevailing prime rate. The credit agreement is for general corporate purposes and contains, among other conditions, restrictive covenants relating to stockholders' equity, indebtedness and payment of dividends. There have been no borrowings under this agreement, which terminates on January 1, 1988.

Continued

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Continued

---

4. Long-Term Debt

	December 31, 1984	December 31, 1983
	(In Millions)	
7.5% debentures	$ 850.9	$ 850.9
Capital leases	946.9	908.9
Equipment obligations	33.6	35.1
	1,831.4	1,794.9
Less current maturities	(120.3)	(115.8)
	$1,711.1	$1,679.1

The United States Railway Association (USRA) purchased the 7.5% debentures under a financing agreement which contains restrictions relating to working capital, stockholders' equity, indebtedness and payment of dividends.

The debentures are callable without penalty, are subordinated to all other obligations of the Company, have preference in liquidation over equity securities and are convertible into Series A preferred stock at the option of the holder at a ratio of 10 shares per $1,000 of debentures. Redemption of debentures is to begin in 1986 under certain circumstances and must be concluded by 2011.

Interest on the debentures is payable in cash under certain circumstances, or otherwise in shares of Series A preferred stock (at the rate of one share for each $100 of interest) or 8% contingent interest notes. Upon settling the consideration paid to predecessor railroads for conveyed assets, interest otherwise payable in Series A preferred stock is payable in contingent interest notes. Contingent interest obligations, $351.3 million at December 31, 1984, are payable only upon the commencement of bankruptcy or other similar proceedings and, accordingly, are not reflected in the financial statements. The effective interest rates on the debentures reflected in expense were .04% in 1984, .03% in 1983 and .09% in 1982.

The Company's noncancelable, long-term leases, principally for equipment, generally include options to purchase at fair value and to extend the terms. Capital leases have been discounted at rates which average 9.4%

Continued

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Continued

---

4. Long-Term Debt continued

and are collateralized by assets with a net book value of $832.4 million at December 31, 1984. Minimum commitments, exclusive of executory costs borne by the Company, are:

	Capital Leases	Operating Leases
	(In Millions)	
1985	$ 188.4	$14.0
1986	178.5	12.1
1987	156.2	11.1
1988	135.7	9.5
1989	124.8	7.9
Thereafter	676.8	18.2
Total lease payments	1,460.4	$72.8
Less amount representing interest	(513.5)	
Present value of lease payments	$ 946.9	

Rent expense was $27.9 million in 1984, $32.8 million in 1983, and $32.2 million in 1982.

Equipment obligations with an average interest rate of 10.3% are collateralized by equipment with a net book value of $39.3 million. Maturities are: 1985, $12.3 million; 1986, $9.0 million; 1987, $4.6 million; 1988, $4.1 million; 1989, $2.7 million; thereafter, $.9 million.

5. Income Taxes

Income taxes for 1984 and 1983 represent a charge equivalent to federal income tax before utilization of net operating loss carryforward. The Company is exempt from state income taxes under NERSA.

Reconciliations of the U.S. statutory tax rate with the effective tax rates follow:

	1984	1983	1982
Statutory tax rate	46.0%	46.0%	46.0%
Decrease in taxes resulting from:			
Permanent differences	(8.9)	(14.3)	(28.2)
Investment credits utilized	(31.5)	(26.9)	(17.8)
Effective tax rate	5.6%	4.8%	-

Continued

5. Income Taxes continued

Permanent differences represent depreciation on the excess of tax over book basis of assets acquired April 1, 1976.

At December 31, 1984, net operating loss and investment credit carryforwards for federal income tax purposes, available to reduce future taxable income and tax payments, respectively, expire as follows:

	Net Operating Loss	Investment Credit
	(In Millions)	
1991	$ 56.2	$ 46.5
1992	372.2	46.0
1993	392.9	57.1
1994	438.6	59.4
1995	290.9	40.8
1996	106.1	10.6
1997	147.5	8.0
1998		12.4
1999		25.0
	$1,804.4	$305.8

Net operating loss and investment credit carryforwards are $2,259 million and $33 million, respectively, for financial reporting purposes at December 31, 1984. These amounts differ from tax carryforwards primarily because of the effect of utilizing investment credits for financial reporting purposes.

The net operating loss carryforward for financial reporting purposes exceeds the deficit at December 31, 1984, due to permanent differences and the use of investment credits.

6. Employee Benefits

The Company and certain subsidiaries maintain defined benefit pension plans which are noncontributory for all non-union employees and contributory for participating union employees. Pension expense for 1984, 1983 and 1982 was $12.5 million, $11.8 million and $24.5 million, respectively. The reduction in pension expense in 1983 was primarily attributable to a change in certain actuarial assumptions ($3.5 million)

Continued

6. **Employee Benefits** continued

and the effect of actuarial gains ($9.7 million). Accumulated benefits and net assets as of plan valuation dates follow:

	January 1, 1984	January 1, 1983
	($ In Millions)	
Actuarial present value of accumulated plan benefits:		
Vested	$341.5	$334.2
Nonvested	2.8	2.9
	$344.3	$337.1
Net assets available for benefits	$502.6	$459.8
Assumed weighted average rate of return	6.7%	6.8%

The Company has a noncontributory ESOP which is intended to provide benefits to all eligible employees. In connection with the ESOP, in 1980 the Company contributed to a subsidiary 4,411,760 shares of common stock (currently not entitled to vote) valued at $8.8 million. Such amount is being amortized over a 10 year period consistent with the annual contributions to the ESOP of 441,176 shares of the subsidiary's preferred stock which are convertible into an equivalent number of shares of the Company's common stock. In general, the ESOP provides that stock conversion and distribution to employees will not occur prior to 1991.

Continued

7. Preferred Stock with Mandatory Redemption

The Company has authorized 41,250,000 shares of Series A preferred stock, $1.00 par value. The outstanding shares have all been issued to USRA.

	Shares	Par Value	Additional Paid-In Capital
		($ In Millions)	
Balance, January 1, 1982	25,487,840	$25.5	$2,277.4
Issued in payment of interest	34,313		.4
Accretion			3.6
Balance, December 31, 1982	25,522,153	25.5	2,281.4
Issued in payment of interest	11,867		.3
Accretion			4.3
Balance, December 31, 1983	25,534,020	25.5	2,286.0
Issued in payment of interest	11,553		.3
Accretion			5.0
Balance, December 31, 1984	25,545,573	$25.5	$2,291.3

Under certain circumstances, Series A preferred stock is entitled to an annual noncumulative dividend of $7.50 per share. No dividends have been declared. Each share is entitled to $100 upon liquidation with preference over Series B preferred stock and common stock and must be redeemed at $100 per share after redemption of the debentures (see Note 4).

8. Preferred Stock without Mandatory Redemption and Common Stock

	Shares at December 31, 1984		
	Authorized	Issued	Held by Subsidiary
Series B preferred stock, $1 par value	35,000,000	31,740,374	
Common stock, $1 par value	250,000,000	29,411,760	4,411,760

There have been no changes in Series B preferred or common stock during the years 1982-1984. The decreases in carrying value of stock held by subsidiary relate to the contribution of shares in connection with the ESOP (see Note 6). The 1984 decrease of $31.2 million in additional paid-in capital resulted from settlements with predecessor railroads related to the value of assets acquired April 1, 1976.

8. Preferred Stock without Mandatory Redemption and Common Stock continued

Series B preferred stock is entitled to an annual noncumulative dividend of $5.00 per share after payment of interest on the debentures and cash dividends on Series A preferred stock. No dividends have been declared. Each share is entitled to $50 upon liquidation with preference over common stock, and is callable after 1987 at $50 per share after redemption of all Series A preferred stock. No dividends may be declared on common stock until all Series A preferred stock is redeemed and dividends on Series B preferred stock are paid.

USRA, as holder of the debentures and the Series A preferred stock, voting as a single class, has the right to elect six Directors. The United States Department of Transportation (DOT), as holder of the Series B preferred stock and the voting shares of common stock, has the right to elect five Directors. The Chief Executive Officer and the Chief Operating Officer of the Company also serve as Directors.

9. Other Income, Net

	1984	1983 (In Millions)	1982
Interest income	$ 80.0	$ 47.2	$ 64.2
Interest expense	(89.8)	(87.1)	(104.6)
Unusual items			
Sales of tax benefits		27.5	91.0
Reversal of allowances for uncollectible receivables			44.1
Other, net	44.0	37.2	30.9
	$ 34.2	$ 24.8	$ 125.6

Unusual items are classified separately because of their significant impact on components of operating results and their unusual nature. Sales of tax benefits represent the net proceeds from sales of certain depreciation deductions and investment credits. In addition, in 1982 the Company reversed certain collectibility allowances in connection with the settlement of substantive issues with passenger authorities and the sale to USRA of certain receivables from these authorities, as permitted by NERSA.

Continued

10. Contingencies

Financing Agreement

The Company has reported to USRA various conditions of possible noncompliance with the Financing Agreement. Should USRA determine that any of these conditions constitutes an Event of Default, repayment of the debentures and certain other long-term debt could be accelerated and redemption of the Series A preferred stock could be required. USRA has waived to March 1, 1986, its rights with respect to those instances reported.

Future Operations

NERSA provides for the sale, under certain circumstances, of the Company's common stock or assets. If attempts to sell the stock are unsuccessful, DOT may approve a plan for the purchase of the stock by Company employees, or, subject to approval of the Board of Directors of USRA, direct the sale of the Company's assets. Legislation will be necessary to conclude any sale of common stock or assets.

Other Matters

The Company is involved in legal actions including antitrust matters and challenges to the reasonableness of certain freight rates. Although the amount of liability, if any, with respect to these matters cannot be ascertained presently, management believes their resolution will not have a material adverse effect on the Company's financial position.

The Company may be contingently liable under indemnification provisions related to sales of tax benefits and for guarantees of debt, aggregating approximately $331 million at December 31, 1984, in addition to the contingent interest obligations (see Note 4).

Continued

11. Condensed Quarterly Data (Unaudited)

Calendar Quarter	First		Second		Third		Fourth	
	1984	1983	1984	1983	1984	1983	1984	1983
			(In Millions Except Per Share)					
Revenues	$857.1	$729.7	$886.7	$778.3	$843.7	$760.3	$791.9	$808.1
Income from operations	85.7	12.2	176.2	97.3	136.2	83.1	67.9	95.6
Income before extraordinary credit	85.9	12.6	168.9	97.3	133.1	85.6	84.5	102.6
Net income	90.9	12.6	178.9	97.3	140.8	85.6	89.6	117.5
Income per common share (primary and fully diluted)								
Income before extraordinary credit	3.16	.44	6.27	3.66	4.92	3.21	3.11	3.85
Net income	3.35	.44	6.64	3.66	5.21	3.21	3.30	4.42

A charge equivalent to income tax for 1983 (see Note 5) reduced fourth quarter income before extraordinary credit by $14.9 million (per share: $.57 primary and fully diluted). An equal and offsetting extraordinary credit relating to the utilization of net operating loss carryforward was included in fourth quarter 1983 net income.

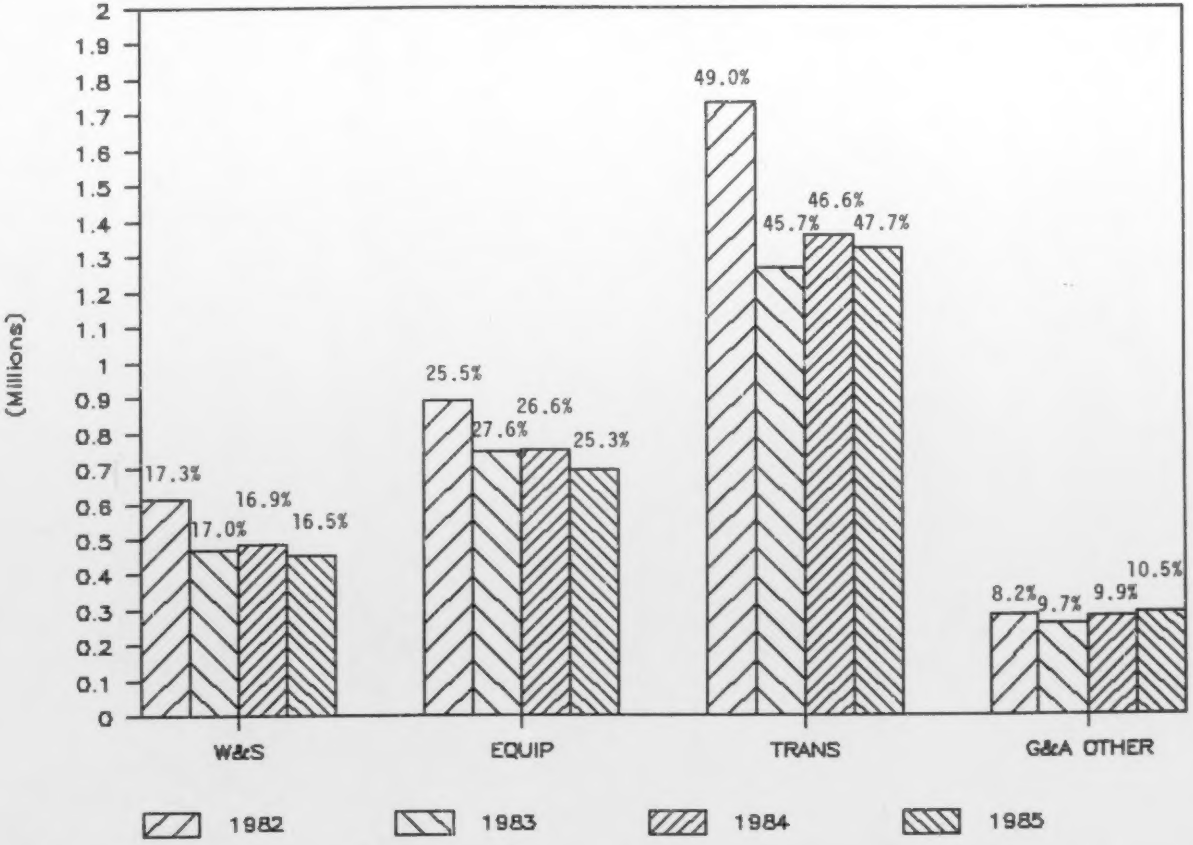
CONRAIL OPERATING EXPENSES

Mr. COUGHLIN. Please also update for the record the bar chart of Conrail operating expenses found on page 677 of last year's hearing record by adding bars for '85.

[The information follows:]

UNITED STATES RAILWAY ASSOCIATION

CONRAIL OPERATING EXPENSES



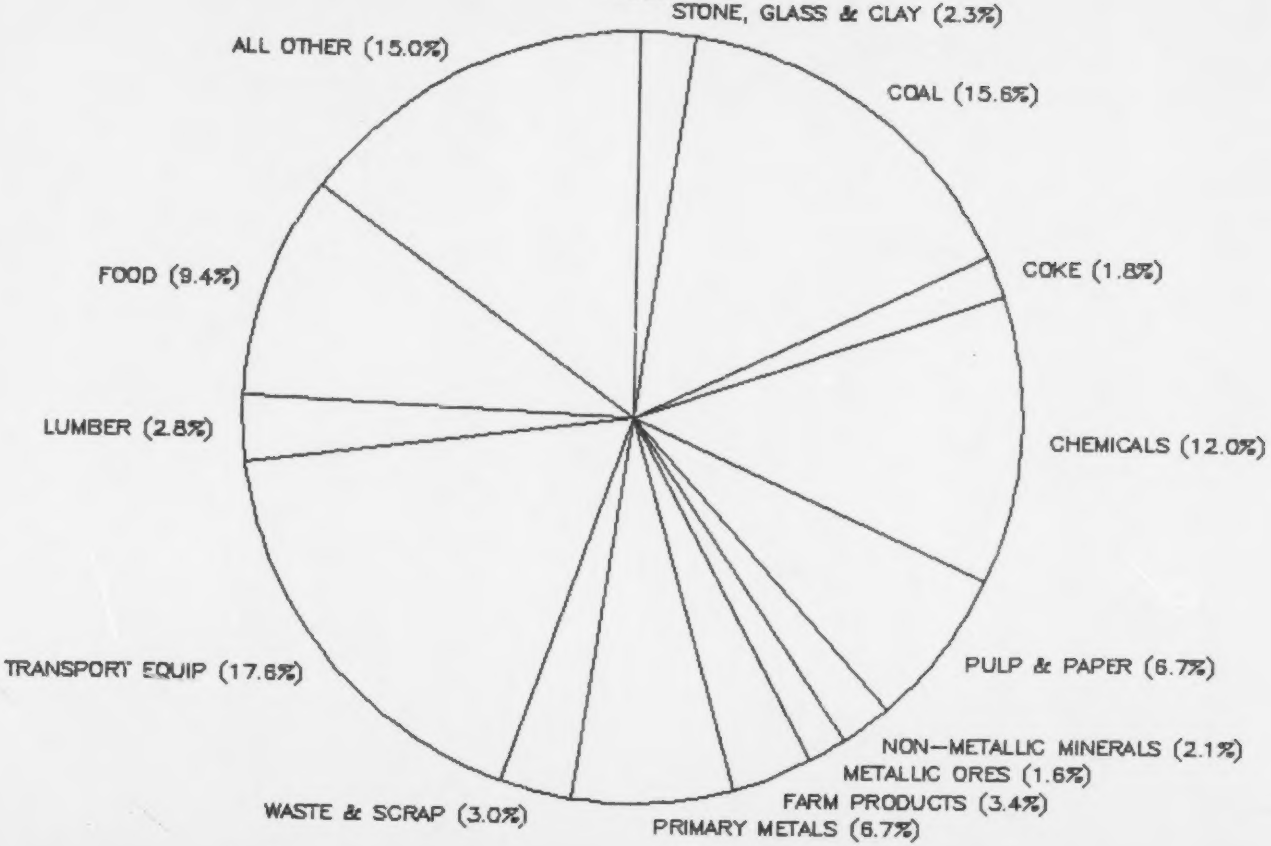
CONRAIL REVENUE BY COMMODITY

Mr. COUGHLIN. Please also provide for the record a pie chart of Conrail's '85 revenue by commodity.

[The information follows:]

CONRAIL REVENUE SHARE BY COMMODITY

1985



CONRAIL SOURCES AND USES OF FUNDS

Mr. Coughlin. Please update for the record the Conrail sources and uses of funds table found on page 681 of last year's hearing record.

[The information follows:]

CONSOLIDATED RAIL CORPORATION--STATEMENT OF CHANGES IN FINANCIAL POSITION
CALENDAR YEARS 1977 THROUGH 1984

(in millions of dollars)

	1977[1]	1978	1979	1980	1981	1982	1983[2]	1984[2]	1985[2]
Sources:									
Operating revenue and other income	3,341	3,579	4,027	4,053	4,291	3,712	3,161	3,483	3,342
Government financing	668	774	729	490	135	--	--	--	--
Equipment financing	141	262	232	89	40	54	118	157	114
Sales of property	64	63	74	46	70	78	51	102	67
Vacation liability settlement	66	--	--	--	--	--	--	--	--
Total sources of funds	4,280	4,678	5,062	4,678	4,536	3,844	3,330	3,742	3,523
Uses of funds:									
Expenses									
Way & structures and equipment (less depreciation)	1,084	1,494	1,510	1,499	1,478	1,289	999	1,027	960
All other expenses	2,531	2,318	2,526	2,567	2,539	2,114	1,639	1,753	1,706
Property and equipment additions	539	770	794	463	380	367	455	556	574
Payment of equipment obligations	68	121	132	126	139	135	126	125	135
Increase (decrease) in working capital, other	58	(25)	100	23	--	(61)	111	281	148
Total uses of funds	4,280	4,678	5,062	4,678	4,536	3,844	3,330	3,742	3,523

[1] 1977 stated on old ICC accounting basis.

[2] Freight only.

CONRAIL FREIGHT EMPLOYMENT

Mr. **COUGHLIN**. Please update for the record the data on Conrail freight service employees found on page 682 of last year's hearing record.

[The information follows:]

Average number of Conrail freight service employees

Calendar Year:	
1985	35,134
1984	37,911
1983	38,409
1982	45,326
1981	57,002
1980	65,666
1979	74,365
1978	78,457
1977	81,856
1976	86,923

CONRAIL PRODUCTIVITY

Mr. **COUGHLIN**. Conrail has made significant productivity improvements in recent years. How does Conrail currently stack up against other Class I railroads in terms of productivity?

[The information follows:]

Two observations are appropriate here. First is Conrail's progress in catching up to the other railroads in terms of expense per revenue ton mile, which is one way of looking at the productivity issue. In 1979, Conrail's unit expense was 80 percent above the average of other large Class I railroads. By 1985, Conrail had declined only 44 percent above the average unit expense. Conrail is able to be profitable despite its remaining disadvantage compared to its competitors because it enjoys an offsetting advantage in revenue per ton mile. Both the revenue and the cost patterns are, in very large measure, a reflection of the differences among railroads in terms of their traffic mix and their physical plant configuration. Productivity is often thought of in terms of employee output. As would be expected from the unit expense relationships that I have described, Conrail has more employees per revenue ton mile than any of the other Class I railroads.

CLASS I OPERATING RATIOS

Mr. **COUGHLIN**. Please also update for the record the operating ratio data found on page 683 of last year's hearing record by adding a 1985 column.

[The information follows:]

MAJOR CLASS I RAILROADS RANKED BY OPERATING RATIO 1984 AND 1985

[In percent]

	1985	1984
Norfolk & Western	79.4	80.9
Southern	80.1	78.3
Burlington Northern	80.7	78.7
C&O [1]	81.1	86.5
Union Pacific	86.4	90.6
Seaboard [1]	86.5	86.1
Conrail	87.6	86.5
Conrail adjusted [2]	89.0	89.7
Santa Fe	92.8	90.4
B&O [1]	95.4	94.6
Southern Pacific	100.5	97.8

[1] Results for the CSX railroads in 1985 have been adjusted to eliminate a non-recurring accounting adjustment.

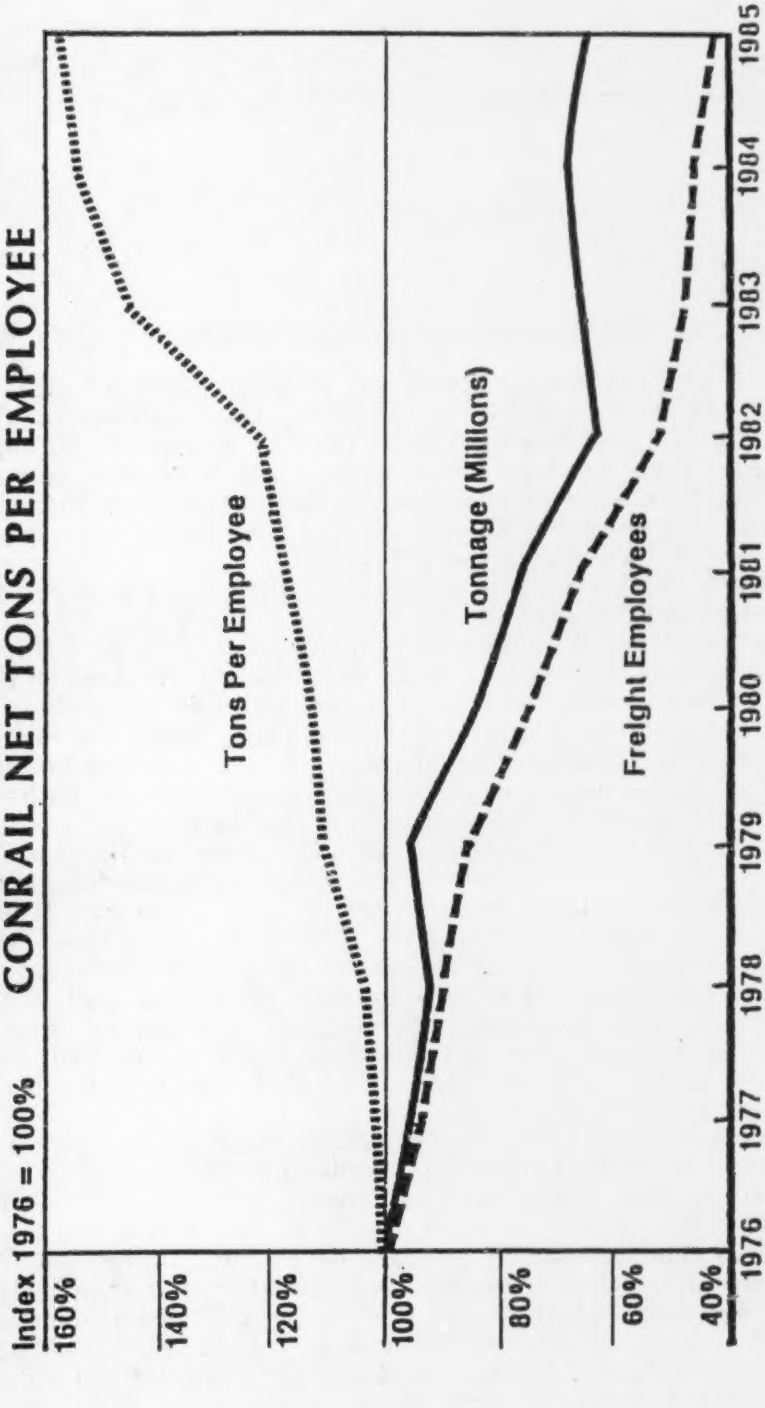
[2] Conrail costs adjusted for industry level wages, state taxes, and job protection.

CONRAIL TONNAGE PER EMPLOYEE

Mr. COUGHLIN. Please also update for the record the tons per employee data and graph found on pages 683 and 684 of last year's hearing record.

[The information follows:]

PAGE 78b



CONRAIL NET TONS PER EMPLOYEE

Source: Conrail

WAGE RATE DIFFERENTIAL SAVINGS

Mr. **Coughlin**. Please update the information on the wage differential found on page 685 of last year's hearing record.

[The information follows:]

	Operating income [1]	Wage rate differential savings	Difference
1981	67	46	21
1982	45	140	(95)
1983	285	132	153
1984	450	55	395
1985	390		390

[1] Before the inclusion of non-operating items.

COAL SHIPMENTS THROUGH PHILADELPHIA

Mr. **Coughlin**. Let me ask something at this juncture about coal shipments. We seem to have directly conflicting testimony on the effect of the Norfolk Southern plan on coal shipments through Philadelphia. There has been some testimony that those shipments would increase as a result of a Norfolk Southern acquisition, and then there has been other testimony that they would very much decrease. Do you have any opinion on that?

Mr. **Berger**. Well, first, let me ask my staff before I give you an opinion, whether they have any facts.

There are no facts. We might as well live with opinions. I think, Congressman, that there are—I speak as somebody who lives in the region, and has a variety of other responsibilities—I think that there are port operators up and down the East Coast, it is fair to say, who have very severe questions about this. I have not participated, for example, in any of the discussions at the Port Authorities of New York and New Jersey with regard to their position on this transaction. I recused myself when I took over the Port on October 1st, and in fact our general counsel has been handling this.

The Port Authority had a position before I got to the port. It has not changed its position. They have serious concerns about the transaction, and those serious concerns relate to the question of how this transaction would affect shipments through its port. Similar concerns have been raised by people in Philadelphia. I do not think that there is evidence in front of us which would give comfort to those states which themselves feel that they would be in a disadvantaged port situation.

Mr. **Coughlin**. Does the U.S. Railway Association plan to make some study of the effect on the coal shipment ports?

Mr. **Berger**. John Wells, who is Director of Studies, is sitting behind me.

Mr. **Wells**. The problem is you are dealing with assertions by businessmen as to what behavior or actions they will take in the future. It is unclear whether they in fact would have an economic incentive to take those actions. There is no way to get to the facts about that. It is strictly a question of assertion of intent in an assumed circumstance that may not materialize.

Mr. **Berger**. In simple English, you don't know what somebody is going to do later, and there is no way you can study something which will be a series of business judgments to take place in the future.

Mr. **Coughlin**. I would guess the completion of it would be studiable, wouldn't it?

Mr. **Berger**. You can make a set of assumptions, but let me go back to some of the things I said before about how people decide to run their business, and the judgments they make when they are driven by need to produce for their shareholders, and some of the short and long term problems, and all of a long list of things that are very hard to predict in advance.

Economic theory and potential is different from what happens. We saw that in Conrail. There were people who looked at Conrail and said that Conrail could not survive. There were a lot of people who did not understand that when you put in very hardnosed management that is concerned with cost control, that started to manage for margin—that changed the way the business of that company was being done—you changed the company. None of the assumptions that went before were therefore valid. You have a transaction, you create a new company, your economic environment changes, some costs at one point change, you get a very different situation.

I do not think it would be fair to assume and to presume and to demand that if economic conditions change whoever the purchaser was would be forced to maintain a plan which was not economic and was negative in the face of changed economic conditions. We wouldn't want to do that.

ACCURACY OF DIVESTITURE STUDIES

Mr. **Coughlin**. I have a hard time distinguishing between this and divestiture studies which also predict the future economic impact on the region and on the shippers.

Mr. **Berger**. To some extent they do share some of the same problems. I think that the difference in divestiture studies is you are talking about patterns of existing practices. Some of those patterns are not totally in the control of the railroad. I think in terms of some of the things we are questioning, the economic decision is driven by this railroad which will have under its control all of the options. If the divestiture were to work, some of those options would not be under the control of the new parent corporation. That is at least one distinction.

CONFLICT OF INTEREST

Mr. **Coughlin**. Before we get to the justifications, I have one further question I need to ask. I know last January 29th, Congressman Oxley wrote the Department of Transportation Inspector General questioning your independence and impartiality in advising the Congress on the sale of Conrail. Specifically, he is concerned that your various positions with the Port Authority of New York, the Long Island Railroad, the New York MTA, and your association with Odyssey Partners of New York will color your judgment. How do you respond to that concern?

Mr. **Berger**. First, I would like to submit for the record a response I made to that. None of these issues that have been raised in this case are new issues, in the sense that they were all disclosed when I was nominated and confirmed by the Senate, and in my testimony here in previous years, when I was a member of the Board of the Metropolitan Transportation Authority, one of whose subsidiary corporations was Long Island Railroad. It was never questioned. I don't think there was ever any conflict.

In fact, I think, as I said before this committee, and the other committees of both Houses, that one of the reasons I was asked to serve as chairman of the U.S. Railway Association at that point in time was because one of Conrail's major problems was commuter railroads. There were questions as to whether or not the commuter railroads should remain part of Conrail, or whether they should be divested, and how they should be divested, and how they could do that with less disruption to service and to the public being served, and less negative financial consequences. These were some things that I could contribute to on both sides, and I think the record on that speaks for itself. That was another piece of what helped Conrail survive. Both Conrail and commuter railroads all have benefitted from that, and I think, I hope, that I in fact helped contribute to that.

One of the issues you raised, and one of the reasons I was chosen over others was that I had a financial background and the firms I was a member of were firms in the investment banking field. One of the firms I was a member of, which was a limited partnership, had an interest in other railroad properties. I had no interest in those transactions. I had no financial interest in that firm. I have never had an interest in any of the other railroads' activities. Other people in the firm held stock and had controlling interest, but the only sadness is that I didn't have an interest, because they all did very well. The investment had been made before I joined the firm, and you know how these issues are structured—the people who had a financial interest were people who had made the investment. I had no investment and was not involved.

With regard to the Port Authority of New York and New Jersey, as I pointed out, when I joined the Port Authority, I recused myself from Conrail deliberations there, and turned that over to the Port's General Counsel, whose deputy assistant is director of handling those positions which the Port Authority took before I got there. This has not changed since then.

NEW YORK PORT AUTHORITY POSITION

Mr. **Coughlin**. It is opposed to the sale.

Mr. **Berger**. The Port Authority has raised questions about the impact on the Port of the transaction that was approved by the Senate. I have severe questions about competitive impact on the Port of New York and New Jersey similar to some of the questions you raised about the Port of Philadelphia. I think that, for full viewing of that, it would be appropriate to have some of the Port of New York and New Jersey people, who in fact have been involved in those deliberations, testify. I am sure they would be glad to.

What I would like to submit for the record is that each of the items which were requested are in fact why I was asked to take the chairmanship, to bring financial background and service background relationship to the problems of the area that is affected. I welcome any further questions that anybody has about anything I have done over the period of time. That is my statement.

The other part of the statement I would like to make is that one of the things I have tried to do as chairman is to position myself in such a way that the staff of the U.S. Railway Association, which is a recognized professional staff, chosen from professional backgrounds, should be able to function as a professional staff and answer questions and be, frankly, protected from the maelstrom of political shells that burst in the atmosphere.

So, fundamentally, the role of the chairman is a blocking back—I am not a quarterback, nor do I carry the ball very much. That has been my role. If you look at the studies, starting with the studies done in '80, the first study done under my chairmanship, and continued studies related to Staggers and NERSA, and profitability studies done in terms of the relationship of Conrail to other Class I railroads, a package of studies was put together that can stand on any shelf in any library of any university or railroad in the country. They have both academic as well as pragmatic appeal. I want everybody to understand if any effort is made to diminish the role and independence of the professional staff of the U.S. Railway Association, I would resent it and will scream very loudly against it.

I accept any question about whether in fact I have a conflict or not, and would be glad to answer it.

RESPONSE TO CONGRESSMAN OXLEY

Mr. Coughlin. Please provide for the record a copy of Congressman Oxley's January 29 letter to the DOT Inspector General along with your March 31 response.

[The information follows:]

MICHAEL G. OXLEY
4TH DISTRICT, OHIO

COMMITTEE ON
ENERGY AND COMMERCE

SELECT COMMITTEE ON
NARCOTICS ABUSE AND CONTROL

CONGRESSIONAL RURAL CAUCUS

Congress of the United States
House of Representatives
Washington, D.C. 20515

1108 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2676

2121 WEST ELM PLAZA
LIMA, OH 45805

115 WEST MAIN CROSS STREET
ROOM 213
FINDLAY, OH 45840

24 WEST THIRD STREET
ROOM 316
MANSFIELD, OH 44902

TOLL-FREE IN OHIO
1-800-472-4184

January 29, 1986

Joseph J. Genovese
Acting Inspector General
Department of Transportation
400 Seventh Street, S.W.
Room 9210
Washington, D.C. 20590

Dear Mr. Genovese:

As a Member of the Committee on Energy and Commerce, I am deeply interested in the current debate on the sale of the Government's common stock interest in the Consolidated Rail Corporation (Conrail). In connection with that sale, the United States Railway Association (USRA) has been asked to provide a number of analyses of the viability of Conrail, and of the effects of various sale proposals. Of course, it is essential that these evaluations be free of any possible bias, and fully objective if they are to be helpful in our deliberations on this issue.

I have recently become aware of facts which may bring USRA's objectivity into question. I have learned that Stephen Berger, Chairman of USRA, has also recently become Executive Director of the Port Authority of New York and New Jersey. Mr. Berger also served until October 1985, as a Director of the Long Island Railroad, and as a Director and Chairman of the Finance Committee of the New York Metropolitan Transportation Authority.

The Port Authority of New York and New Jersey has taken a definite position against one of the major Conrail purchase proposals. Moreover, the Long Island Railroad has close financial and operating ties with Conrail, and is heavily dependent on Conrail with respect to its rail freight business.

I am also informed that Mr. Berger has had a continuing association as an investment banker with Odyssey Partners of New York. Odyssey Partners is a private investment limited partnership which owned 6.4 percent of the common stock of the Chicago Milwaukee Corporation, according to the April 30, 1985 Proxy Statement of that Corporation. Odyssey Partners was also, as of April 30, 1985, a member of a "Schedule 13D" group, which owned 48.9 percent of the common stock of the Chicago Milwaukee Corporation. Among other members of that group were Compagnie de Banque et'd Investissements; Quantum Overseas, N.V.; George Soros; Soros Fund Management Co.; Ezra K. Zilkha; Selim K. Zilkha; and Zilkha & Sons, Inc. Moreover, these companies and persons are involved in commitments to purchase the common stock of Conrail owned by the Government under a purchase proposal made by Morgan Stanley & Co., on which the Port Authority has taken no position.

Under the standards of ethical conduct of USRA (49 CFR Subtitle A-Appendix), each USRA employee is required to avoid:

> any action, whether or not specifically prohibited by these regulations, which might result in or create the appearance of:
>
> (1) using his Association office for private gain;
>
> (2) giving preferential treatment to any person;
>
> (3) impeding the efficiency or economy of the Association;
>
> (4) losing complete independence or impartiality;
>
> (5) making an Association decision outside of official channels; or
>
> (6) affecting adversely the confidence of the public in the integrity of the Association. (Emphasis added.)

Although USRA is an independent entity, its primary responsibility is the monitoring of the Government's investment in Conrail. The disposition of that investment, and the sale of the Government's common stock interest, are responsibilities of the Secretary of Transportation under the Northeast Rail Service Act of 1981. Therefore, it appears that USRA's activities relate directly to programs and operations of the Department of Transportation (DOT). Under Section 6(a)(2) the Inspector General Act of 1978 (5 U.S.C. App. §6(a)(2)), the Inspector General of DOT is authorized to "make such investigations and reports relating to the administration of the programs and operations of the applicable establishment" as he judges necessary or desirable.

Given the facts in this letter, I am concerned that Mr. Berger's multiple interests and associations with groups and organizations with a direct stake in the future of Conrail may call into question his independence and impartiality, and thereby adversely affect public confidence in the integrity of USRA. I request that you review this matter, and any additional facts your inquiry may disclose, and report your findings, and any recommendations you may have concerning the matter, to me at the earliest possible date.

Thank you for your assistance and cooperation.

Sincerely,

Michael G. Oxley
Member of Congress

cc: Honorable Elizabeth H. Dole
Secretary of Transportation

United States Railway Association

955 L'Enfant Plaza, S.W.
Washington, D.C. 20595
(202) 488-8777

Cary W. Dickieson
Executive Vice President &
Chief Operating Officer

March 31, 1986

Joseph J. Genovese
Acting Inspector General
Department of Transportation
400 Seventh Street, SW
Room 9210
Washington, D.C. 20590

Dear Mr. Genovese:

This is in response to our discussions in meetings with you and members of your investigative staff on March 20 and 21 regarding Congressman Michael G. Oxley's letter to you of January 29, 1986, concerning matters relating to present and prior business affiliations of Mr. Stephen Berger, Chairman of the United States Railway Association Board of Directors.

The United States Railway Association (Association) is an independent government corporation created by the Regional Rail Reorganization Act of 1973, as amended (Rail Act) (45 USCA 701 et. seq.), and incorporated under the Nonprofit Corporation Act of the District of Columbia (29 D.C. Code 1001 et. seq.). The Association is also a mixed-ownership government corporation under section 201 of the Government Corporation Control Act of 1948, as amended (31 USCA 9101 (2)), and as such is subject to the audit jurisdiction of the General Accounting Office.

The Inspector General Act of 1978 (IGA), as amended, provides in 5 USCA App. 3 section 3 for the creation of Offices of Inspector General in fifteen departments and agencies, including the Department of Transportation (DOT). Each such department and agency is identified in the IGA as an "establishment," thereby defining the boundaries within which the respective Inspectors General have enumerated audit and investigative responsibilities (5 USCA App. 3, section 11). The functions transferred to the respective Offices of Inspector General are contained in 5 USC App. 3 section 9. Those specifically transferred to your office are listed in subsection (H) of section 9 and do not include any functions from the Association or from organizations having audit or investigative responsibilities applicable to the Association. As an independent government corporation, the Association is not and never has been a part of the DOT "establishment," as defined in the IGA, and therefore is not within the audit and investigative powers conferred on your office by that law.

As we said repeatedly in our recent meetings, we are more than willing to discuss Mr. Berger's position as Chairman of the Board of Directors and his present and prior business affiliations. The questions raised in Mr. Oxley's letter all relate to facts that are a matter of public record and discussion, starting with Mr. Berger's confirmation hearings before the Senate Commerce Committee in 1980, and continuing through the latest amendments to the Rail Act in December, 1985 (PL 99-190, December 19, 1985). However, many of the questions asked by your staff related solely to the internal operations of the Association, and in particular to the preparation and publication of the Association Staff Report of July 29, 1985, "Conrail Sale Studies: Part I." Since we believe that such detailed questions concerning the internal operations of the Association are neither an appropriate subject for review by your office nor pertinent to the issues raised by Congressman Oxley, we declined to respond. 1/

You suggested that since some Association loans and financial assistance programs were funded by Association borrowings guaranteed by DOT, your office is authorized to conduct the review requested in Congressman Oxley's letter. Section 212 of the Rail Act authorizes the Association and the Secretary of Transportation to direct recipients of financial assistance provided under the Rail Act to maintain appropriate records, and permits the Association and the Secretary to audit or examine such records of such recipients. No issue raised in Congressman Oxley's letter, or by your questions to us, relates to any loan, obligation, or other arrangement for financial assistance under the Rail Act; and, of course, §212 authorizes DOT to examine only the records of recipients of such assistance, not the records of the Association.

Finally, although you did not make or endorse this argument in your discussions with us, Congressman Oxley's letter suggests that your authority under Section 6(a) (2) of the IGA to "make

---

1/ Your suggestion that the Secretary's membership on the Association Board of Directors authorizes you to audit or examine the records or activities of the Association is not supported by law. The Secretary's Board membership does not enlarge the powers conferred on you by the IGA. If the Secretary, as a member of the Association Board, should desire to have an audit performed by you of the Association, the procedures for doing so are spelled out in the Association Board Resolution of July 29, 1976, which provides "that no member of the Board of Directors is to undertake an independent audit of the Association without the approval of the Board." If such approval were sought and obtained, your review would be at the direction of the Association Board, and not pursuant to the IGA.

such investigations and reports relating to the administration of the programs and operations of the applicable establishment" as you judge necessary, permits your present investigation. Again, the Association is not a part of the DOT "establishment" as defined in the IGA. Moreover, the Northeast Rail Services Act (NERSA) clearly delineates the responsibilities of the Secretary and those of the Association in selling Conrail stock, so that no action of Mr. Berger or the Association in pursuit of their responsibilities under NERSA could possibly be considered as relating to the administration of programs or operations of the Department. Indeed, to accept the suggestion in Congressman Oxley's letter would mean reading the IGA as authorizing your office to conduct any examination it saw fit into the records, activities, or motives of any private citizen who chose to speak concerning a program of the Department.

Turning to the specific questions raised by Congressman Oxley, his letter suggests the possible applicability of the Standards of Ethical Conduct for Association Employees, 49 CFR Subletter A - Appendix, to a director of the Association, be it Mr. Berger or the Secretary of Transportation. Mr. Berger, since his appointment and confirmation, has served on a part-time basis 2/ as the Chairman of the Board of Directors of the Association. As a member of the Board, Mr. Berger's outside activities and affiliations, like those of all other Association directors, are governed by the provisions of Section 201 of the Rail Act, pursuant to which Association directors are appointed. A director under general corporate law is not an employee of the corporation. Since the incorporation of the Association in 1974, the Standards of Conduct for Association Employees have never been considered to apply, nor have they ever been applied, to any of the individuals who have served as members of the Association Board.

At the time of his nomination and confirmation in 1980, Mr. Berger held positions as a professor at New York University's Graduate School of Public Administration, a member of the Board of the New York State Metropolitan Transportation Authority (MTA) and chairman of its Finance Committee, and president of Stephen Berger Associates, Inc., a management consulting firm specializing in

---

2/ Of the Association's three chairmen, the first served full-time and the last two on a part-time basis. Under section 201(d)(2) of the Rail Act, Mr. Berger is entitled to a per diem payment for each day he is engaged in the actual performance of his duties as Association chairman. Mr. Berger has reported 60 days or less service in each calendar year since his appointment.

public and municipal finance. 3/ As a member of the Board of MTA, Mr. Berger was also a director of the Long Island Railroad (LIRR),a subsidiary corporation of MTA. Then and now MTA conducts extensive commuter passenger rail operations in its own name and through the LIRR. 4/ All of the above affiliations were matters of public record and discussion during the nomination and confirmation process.

In 1981, Mr. Berger was employed by Oppenheimer & Co., Inc., as Director of Corporate Development. In May 1981, Mr. Berger learned that Oppenheimer & Co., Inc., through its trading department, held securities of the Reading Railroad Company, the Erie Lackawanna Railway Company, and the Central Railroad Company of New Jersey. The bankrupt estates of those entities were parties to the Valuation Litigation managed by the Association to determine the value of the properties conveyed by the Association to Conrail in April 1976. Mr. Berger took steps both at the Association and Oppenheimer & Co., Inc., to recuse himself from matters involving Reading, Erie Lackawanna, and Central of New Jersey, and so advised the Association Board (See Attachment II).

In August 1981, NERSA reconstituted the Board of Directors of the Association and amended section 201 of the Rail Act to provide that the Chairman of the Board of Directors of the Association may not have any employment or direct financial relationship with any railroad. NERSA also designated Mr. Berger as Chairman of the newly restructured Board of Directors of the Association through December 31, 1983. During the drafting of the legislation that resulted in the passage of NERSA, Mr. Berger's associations with

---

3/ Although not mentioned in Congressman Oxley's letter, your staff asked several questions concerning any relationship between Mr. Berger and Lazard Freres & Co. Neither at the time of his appointment and confirmation, nor at any time before or since, has Mr. Berger been employed by, a partner of, or had any financial interest in Lazard Freres & Co. Prior to 1981, Stephen Berger Associates, Inc. was a consultant to Lazard Freres on some public and municipal finance projects. As discussed in the July 29, 1985 Staff Report, the Association has retained Lazard Freres as financial advisor to assist in our review of financial issues associated with the Conrail sale proposals. Mr. Berger's memorandum to the Association Board concerning Lazard's engagement is enclosed as Attachment I.

4/ Freight operations of LIRR presently account for less than 3% of LIRR revenues. In addition to its primary interchange with Conrail, LIRR also interchanges freight traffic with the Boston & Maine Railroad and the New York Cross-Harbor Railroad.

MTA and Oppenheimer & Co, Inc., were a matter of public knowledge and understood by the participants in the process, including the committees of Congress and the Department of Transportation.

In early 1983, Mr. Berger left Oppenheimer & Co. and joined the investment banking firm of Odyssey Partners. His employment with Odyssey Partners involved no financial participation or compensation of any sort on his part arising from Odyssey Partners' interest in the Chicago Milwaukee Corporation which is a stockholder of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Nevertheless, the staff of the Association was advised not to circulate any documents or information regarding the Chicago Milwaukee Corporation or the Milwaukee Railroad to Mr. Berger. In July 1985, Senator Slade Gorton of Washington requested the Association's assistance in determining the value of an abandoned rail line on the Olympic Peninsula owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Upon learning of Senator Gorton's request, Mr. Berger recused himself from participation in the Association's staff response (See Attachment III).

In December 1983, Mr. Berger's term as Chairman of the Board was extended by law for an additional period of two years (P.L. 98-181). Again his affiliations with MTA and Odyssey Partners were a matter of public record.

In October 1985, Mr. Berger was named Executive Director of the Port Authority of New York and New Jersey (Port Authority). At that time Mr. Berger terminated his relationships with MTA, Odyssey Partners, and New York University. Mr. Berger was aware that the Port Authority had expressed views concerning the proposed sale of Conrail. As a result, upon becoming Executive Director of the Port Authority, Mr. Berger advised the General Counsel of the Port Authority that he would not participate in formulating or presenting the views of the Port Authority concerning proposals for the sale of Conrail.

On December 19, 1985, Mr. Berger's term as Chairman of the Association's Board of Directors was again extended for two additional years (PL 99-190). In addition, Section 201(d)(2) of the Rail Act was amended to provide that the Chairman of the Association's Board of Directors may not have any employment or other direct financial relationship with any freight railroad, in order to foreclose any appearance of conflict of interest which might arise from the fact that the Executive Director of the Port Authority is also ex officio the President of Port Authority Trans Hudson Corp. (PATH), a Port Authority subsidiary. PATH is an urban mass transit agency which operates subway lines between New York and New Jersey, and which fits within the Interstate Commerce Act (and therefore the Rail Act) definition of a "railroad."

Thus, the Executive Director of the Port Authority, as ex officio President of PATH, might be considered an employee of a "railroad" and in conflict with the previous provisions of section 201(d)(2) of the Rail Act. As stated by Senator Lautenberg before the U.S. Senate (Congressional Record, October 23, 1985, page S 13851), elimination of this potential conflict of interest was the objective of his proposed amendment, which became law on December 19, 1985.

Thus, throughout his service as the Association's part-time Chairman, Mr. Berger has been completely open and candid concerning his business affiliations. These affiliations are known to Congress, and during the Association's authorization and appropriation hearings members frequently ask Mr. Berger for information which draws upon his expertise and experience in transportation, public finance and administration, and investment banking. These qualifications appear to be considered by Congress as assets to Mr. Berger's performance of his duties as Chairman, rather than impediments.

Sincerely,

cc: Honorable Michael G. Oxley

Attachment I

United States Railway Association

955 L'Enfant Plaza North, S.W.
Washington, D.C. 20595
(202) 488-8777

Stephen Berger
Chairman of the Board

August 31, 1984

Dear Fellow Board Member:

At our last meeting I mentioned that it would be desirable for USRA to contract for some outside professional assistance to enable USRA to respond promptly to whatever Congressional request for analysis ultimately emerges, thereby facilitating and not hindering the sales process. Events since then have confirmed my view that such additional assistance is necessary. Therefore, I have had USRA engage Lazard Freres & Co. to render financial advice concerning any review by USRA of proposals to sell Conrail. While the agreement assures that Lazard's services will be available to USRA, the agreement does not formally commence, and USRA does not assume any financial obligation, unless and until the Department of Transportation recommends a transaction for selling the Conrail shares. A copy of the engagement letter is attached.

The Lazard team will be led by Frank G. Zarb and Eugene J. Keilin, General Partners of the firm. Both Mr. Zarb and Mr. Keilin specialize in advising corporations, governments, and government agencies. Mr. Zarb was formerly Assistant to President Ford and Administrator of the Federal Energy Administration. He currently serves as a member of the Presidential Advisory Committee on Federal Pay and a member of the United States Investment Policy Advisory Committee. Mr. Keilin was formerly Executive Director of the Municipal Assistance Corporation, (MAC), the New York State agency created to deal with the fiscal crisis in New York City, and is currently a Director of the Weirton Steel Corporation, the largest employee-owned company in the United States.

I believe the retention of Lazard should allay the concerns expressed at our appropriations hearings as to USRA's capacity to provide a timely and informative response to a proposed sale transaction.

Sincerely,

Steve

Attachment

Mr. Lawrence J. Blume, Department of the Treasury, and
Various other staff personnel of the Department of the Treasury, the Department of Transportation, the Interstate Commerce Commission and the Association.

Portion of the Meeting Closed to the Public

The meeting was closed pursuant to the certification of the Executive Vice President-Law and majority vote of the Board pursuant to Public Law 94-409.

Executive Closed Session

Internal Personnel Matters

Mr. Berger reported to the Board on his new association with Oppenheimer & Co., Inc. and requested that the following correspondence to the Corporate Secretary be made part of the minutes of the meeting:

Stephen Berger

1050 Park Avenue
New York, New York 10028
Telephone: (212)876-7788

May 11, 1981

MEMORANDUM FOR MR. PETER J. GALLAGHER, SECRETARY,
UNITED STATES RAILWAY ASSOCIATION

FROM: STEPHEN BERGER

The purpose of this memorandum is to advise the Association and the Board of Directors formally of an employment arrangement that I have entered into with Oppenheimer & Co., Inc. ("Oppenheimer"). Pursuant to this arrangement, I am employed by Oppenheimer for a fixed salary, and I may receive additional compensation determined by the particular matters on which I work.

As you will note from the attached copy of a letter dated May 11 to Oppenheimer, Oppenheimer owns some securities of the Erie Lackawanna Railway Company ("EL") and Reading Company ("Reading"). As noted in my letter, they intend in the near future to dispose of the EL securities to an entity in which they do not have any interest.

In order to prevent any conflict-of-interest from arising

Attachment II

out of my arrangement with Oppenheimer and my position as Chairman of the Association, I have informally disqualified myself from any Reading claim or matter before the Association. I request that this action be formally noted for the Board.

In addition, I have reached certain understandings with Oppenheimer as described in the attached letter. I would appreciate it if you would bring those understandings to the Board's attention.

Attachment

Stephen Berger
Associates, Inc.

1050 Park Avenue
New York, New York 10028
Telephone: (212)876-7788

Oppenheimer & Co., Inc.
One New York Plaza
New York, New York 10004

May 11, 1981

The purpose of this letter is to note for the record certain understandings that we have reached concerning my employment by Oppenheimer & Co., Inc. These understandings arise because of my employment by Oppenheimer & Co., Inc. ("Oppenheimer") at a time when I am Chairman of the United States Railway Association ("Association").

The Association, as you know, has major responsibility with respect to the defense of claims under Sections 303(c) and 306 of the Regional Rail Reorganization Act of 1973, and a significant role in planning the structure of rail service in the northeast region of the United States. The principal claimants under Sections 303(c) and 306 of the Act are Ann Arbor Railroad Company, Central Jersey Industries, Inc., Erie Lackawanna Railway Company ("EL"), Lehigh and New England, Lehigh Valley Railroad Company and Reading Company ("Reading").

You have advised me that Oppenheimer has investments of a relatively small value in EL securities. You have also advised me that in the near future Oppenheimer will dispose of these securities to an entity in which Oppenheimer has no financial interest. You have also advised me that Oppenheimer owns Reading securities of approximately $600,000 in principal amount. Finally, it is my understanding that Oppenheimer wishes to be free to render investment banking advice to any of the claimants should it be called upon to do so.

In light of the foregoing, I have requested and Oppenheimer has agreed to the following arrangements:

1. In order to prevent any possible inadvertent disclosure of information I may have concerning these claimants, I have requested that you advise Oppenheimer's officers, directors and employees that they should not discuss with me or in my presence any matter affecting any of the Section 303(c) and 306 claimants. I have also requested that Oppenheimer's officers, directors, and employees not route to me or call to my attention any papers concerning any of these claimants except publicly available materials such as annual reports.

2. I will not work on any matter for Oppenheimer in which any of the Section 303(c) or 306 claimants has a financial interest.

3. Finally, you will promptly advise me: (a) if Oppenheimer or any of its subsidiaries should dispose of the interests presently held in EL and Reading securities; (b) if Oppenheimer or any of its subsidiaries should acquire an interest in any of the other Section 303(c) or 306 claimants; or (c) if Oppenheimer or any of its subsidiaries should be asked to render services to any of the claimants.

This letter is being brought to the attention of the Board of Directors of the Association and, as that Board has been advised, I have disqualified myself from any Reading claim or matter before the Association because of the interests held by Oppenheimer.

Sincerely yours,

Stephen Berger

June 3,1981

MEMORANDUM FOR MR. PETER J. GALLAGHER, SECRETARY,
UNITED STATES RAILWAY ASSOCIATION

FROM: STEPHEN BERGER

The purpose of this memorandum is to supplement my memorandum of May 11, 1981, in which I advised the Association and the Board of Directors of an employment arrangement that I have entered into with Oppenheimer & Co., Inc., (Oppenheimer).

Upon further discussions with Oppenheimer, I have been advised that Oppenheimer's Trading Department from time to time engages in market activities involving the securities of the Erie Lackawanna Railway Company (EL). In the course of such activities, Oppenheimer from time to time acquires and holds ownership interests in EL securities.

While these ownership interests are small, counsel has advised that Section 208(a) of Title 18 of the United States Code does not provide an exception for insubstantial holdings. Counsel also questioned the applicability of Section 208(a) to the Association. However, to avoid any conflict or possible appearance of conflict arising out of my arrangement with Oppenheimer and my position as Chairman of the Association, I have disqualified myself from any discussion, decision or other participation in any EL claim or matter before the Association. I request that this action be formally noted for the Board.

Mr. Berger excused himself from the meeting while the Board discussed his association with Oppenheimer & Co., Inc., and Mr. Dickieson made a report on the litigation. Mr. Berger designated Mr. Salmon to act as chairman during his absence.

Litigation Report

Mr. Dickieson made a report to the Board regarding the litigation and recommended amendment of the Board's resolution of March 21, 1981 regarding the litigation. Upon recommendation of Mr. Dickieson and the Finance and Valuation Advisory Committee, the Board, on motion duly made by Mr. Sender, seconded by Mr. Blatz and discussed, approved the amendment of the March 21, 1981 Board resolution.

and Norristown Railroad Company pursuant to section 306(c)(1) of the Regional Rail Reorganization Act of 1973, as amended.

Mr. Berger requested that the following correspondence with the Corporate Secretary regarding Central Jersey Industries, Inc., (Central Railroad Company of New Jersey) be included in the minutes of the meeting.

Stephen Berger 1050 Park Avenue
New York, New York 10028
Telephone: (212)876-7788

September 10, 1981

Mr. Peter J. Gallagher
Corporate Secretary
955 L'Enfant Plaza North, S.W.
Washington, D. C. 20595

Dear Mr. Gallagher:

The purpose of this letter is to supplement my correspondence of May 11 and June 13, 1981, regarding my employment arrangement with Oppenheimer & Co. (Oppenheimer).

I have been advised that Oppenheimer's Trading Department has undertaken to create markets for and take ownership and other positions in the securities of Central Jersey Industries, Inc. (the successor to the Central Railroad Company of New Jersey). I am also advised that such holdings and positions will not be substantial.

Although counsel continues to question the applicability of Section 208(a) of Title 18 of the United States Code to the Association, they have counseled that section 208(a) does not provide an exception for insubstantial holdings. Therefore, to avoid any conflict or possible appearance of conflict arising out of my arrangement with Oppenheimer and my position as Chairman of the Association, I have disqualified myself from any discussion or other participation in any Central Jersey Industries, Inc., claim or matter before the Association.

I request that this action be formally noted for the Board.

Sincerely,

Attachment III

United States Railway Association

955 L'Enfant Plaza North, S.W.
Washington, D.C. 20595
(202) 488-8777

Stephen Berger
Chairman of the Board

July 9, 1985

MEMORANDUM

To: Cary W. Dickieson, Executive Vice President

From: Stephen Berger, Chairman

I received a copy of the letter dated July 2, 1985 from Senator Gorton of Washington requesting the assistance and expertise of the Association in determining the value of the assets of an abandoned line of railroad on the Olympic Peninsula in the State of Washington owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

As you are aware, Odyssey Partners, with whom I have an employment relationship, is part of a group of investors which holds a significant investment in the Chicago Milwaukee Corporation, which in turn is the stockholder of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. As I have previously informed you, my employment arrangements with Odyssey Partners provide that I have no financial participation of any sort arising from Odyssey Partners' interest in the Chicago Milwaukee Corporation. The staff of the Association has also been instructed not to circulate documents or any other information regarding the Milwaukee to me.

To avoid the appearance of any conflict of interest arising from my relationship to Odyssey and its investment in Chicago Milwaukee, I will not participate in or review any deliberations or decisions of the staff of the Association in responding to Senator Gorton's letter and request that documentation, reports or other information relating to any action by the staff not be transmitted or communicated to me prior to being publically released.

Attachment III

SLADE GORTON
WASHINGTON

COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
SMALL BUSINESS
INDIAN AFFAIRS

United States Senate
WASHINGTON, DC 20510

513 Hart Senate Office Building
(202) 224-2621

2988 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174
(206) 442-5545

770 U.S. Court House
W. 920 Riverside Avenue
Spokane, WA 99201
(509) 456-6816

First Federal Plaza, Suite 445
1220 Main Street
Vancouver, WA 98660
(206) 696-7838

July 2, 1985

Mr. Stephen Berger
Chairman
United States Railway Association
955 L'Enfant Plaza
Washington, D.C. 20595

Dear Mr. Berger:

I am writing to request the assistance and the expertise of the United States Railway Association on a matter of great importance to the economy of western Washington State.

In 1980 the Chicago, Milwaukee, St. Paul and Pacific Railroad Company ceased operations on a 50+ mile rail line between Port Angeles and Port Townsend, Washington. After receiving abandonment authority for the line from the Interstate Commerce Commission, the Milwaukee Railroad entered into a lease agreement, with the option to buy, with two individuals who sought to continue rail service on the line. Unfortunately, this effort failed and the new operators went bankrupt last year. Once again, the Olympic Peninsula was left without an operating rail system.

The Peninsula Development Association, a non-profit corporation composed of representatives of various municipal and other governmental entities on the Olympic Peninsula, is now interested in purchasing the line from the Milwaukee Railroad and leasing it to a viable short line operator. However, before the Association can enter into negotiations with the Milwaukee Railroad it requires a study which will determine the value of the assets of the line. The study would not include the value of the land on which the line runs.

In an effort to assist the Association in gaining this information I request that USRA conduct this study and report its findings to the Association and to my office. If this action can be accomplished within the bounds of your responsibility and resources, it would greatly enhance the effort to return rail service to the Olympic Peninsula. It is my understanding that the Association will be providing your office with technical details for this request. Because time

Attachment III

is very important -- the Milwaukee Railroad can begin pulling up track and selling it for scrap at any time -- please contact my office as soon as possible with your response. I look forward to working with you and the Association to accomplish this task.

Thank you for your attention to this request.

Sincerely,

Slade Gorton

SLADE GORTON
United States Senator

SG:bk

AMOUNT OF CONRAIL CASH BEING PURCHASED

Mr. **Coughlin**. Before we turn to the justifications I want to ask one more question on the value. There is $900 million in cash in Conrail now, am I correct? There is some excess cash in the railroad retirement plan, is there not?

Mr. **Berger**. Yes. Depending on economic assumptions, around $200, $250 million, something like that.

Mr. **Coughlin**. So, potentially for $1.2 billion, you are buying $1.2 billion in cash?

Mr. **Berger**. Yes.

JUSTIFICATIONS FOR CONTINUATION OF USRA

Mr. **Coughlin**. We will turn to the justifications.

The President has submitted no budget request for the U.S. Railway Association for 1987. Do you think the U.S. Railway Association should be continued once the current studies underway are completed?

Mr. **Berger**. Congressman, as I have said before, I think that is a judgment that this committee and the committees of the Senate and the House have to make. I think one of the things that the staff of the U.S. Railway Association has provided is a capacity for independent analysis. My judgment is that at a point in time when the sale is consummated, there will be no need for the U.S. Railway Association to continue. I think it might have some value to you up until that point, and until the transaction is done.

SUNSET OF USRA

Mr. **Coughlin**. If Conrail is sold, you indicated perhaps the U.S. Railway Association should be sunsetted. If so, how quickly could this be accomplished and what termination costs could be expected?

Mr. **Berger**. I think it would take about six months to wind down, and we have a six months termination provision in our lease. We have to deal with personnel who would need a reasonable time to find new employment, and we have an estimate of about $650,000.

USRA STAFFING

Mr. **Coughlin**. You have submitted a budget estimate showing that you will require $2.3 million to continue operations in 1987 if Congress so chooses. How many people would this support and how many do you currently have on board?

Mr. **Berger**. It would support 22 people, which I believe is our current complement.

GRAMM-RUDMAN IMPACT

Mr. **Coughlin**. You were reduced by $103,000 by Gramm-Rudman-Hollings in fiscal year year 1986. How did this affect your operations?

Mr. **Berger**. Well, we were able to dispose of our computer and that reduced our cost early in the year, so that enabled us to handle the cut.

COMPUTER DISPOSITION

Mr. COUGHLIN. On page 4, you state that you disposed of your ADP equipment to the D.C. government on September 30. How much did you receive for your computer, and what is the D.C. government using it for?

[The information follows:]

I don't personally know what the D.C. government is using the computer for. We followed the procedures applicable to other Federal agencies, under which computers are surrendered to GSA and offered by them first to Federal establishments and then to the D.C. government. The transfer was made at no fee. D.C. paid for the expense of moving the computer to its own installation.

PERSONNEL SKILLS MIX

Mr. COUGHLIN. Please update for the record the personnel skills mix breakdown found on page 737 of last year's hearing record.

[The information follows:]

Chairman's Office.—Total staff 5, including one clerical (Executive Administration, General Counsel, Corporate Secretary)

Conrail Evaluation Department.—Total staff 14, including Staff Director and 3 clerical. Major functional groupings are:

3 Financial analysts;
4 Marketing analysts;
1 Engineer;
4 Operations and cost analysts;
1 Application programmer.

Accounting, personnel, and miscellaneous activities (such as reproduction, purchasing, archives).—Total staff 3.

ADMINISTRATIVE COSTS

Mr. COUGHLIN. Please also update the administrative cost table found on page 744 of last year's hearing record by adding a fiscal year 1986 column.

[The information follows:]

	Fiscal Year—			
	1983 actual	1984 actual	1985 actual	1986 estimate
Rents, utilities, and communications:				
Space rental	$422,059	$310,559	$373,936	$324,000
Equipment rental	43,270	35,059	35,418	36,000
Telephone	28,963	25,896	23,757	24,000
Delivery service and postage	15,051	9,468	16,742	16,000
Extra service charges (utilities)	63,443	44,783	22,349	3,000
Total	572,786	425,765	472,202	403,000
Contractual administrative services:				
Building alterations	19,241	1,713	648	2,000
Equipment maintenance (computer)	122,850	172,551	122,007	0
Equipment maintenance (other)	13,216	12,649	11,701	10,000
Temporary personnel services	11,043	2,372	2,540	0
Support services	2,246	0	0	0
Medical services	4,032	3,318	3,070	3,000
Auditing services	4,808	0	0	0
Office move	4,702	0	0	0
Outside payroll service	2,956	2,240	1,690	2,000
Licenses and fees (computer)	21,000	18,000	25	0
Property Insurance	0	0	5,412	3,000
Archiving	0	0	500	0
Total	206,094	212,843	147,593	20,000

LITIGATION COSTS

Mr. **Coughlin**. Why do you require $95,000 for litigation costs in fiscal year 1987?

[The information follows:]

Our budget justification statement should have identified the function as General Counsel rather than litigation.

CONCLUDING REMARKS

Mr. **Coughlin**. That concludes this morning's hearing. We thank you very much for being here and for your patience and your advice. Certainly lots of advice.

Mr. **Berger**. My pleasure, Congressman. I am not sure I want to say that I hope to see you again next year or not.

Mr. **Coughlin**. Thank you very much.

WITNESSES

	Page
Ballerini, W. R	1
Bayne, J. H	657
Berger, Stephen	821
Blansitt, E. L., III	657
Claytor, W. G., Jr	345
English, J. H	345
Ferrara, T. F	1
Gailliard, Bernard	657
Gradison, H. J	657
Guthrie, E. E	657
Hayward, Charles	345
Hennigan, J. F., Jr	657
Hogya, M. G	657
Krick, Robert	1
Lindsey, S. M	1
Llewellyn, N. S	657
Loftus, W. E	1
Mackall, J. F	657
Mason, J. M	1, 345
Riley, J. H	1, 345
Rogers, Ray	1
Rooney, J. C	1, 345
Southard, W. R	657
Thompson, L. S	1, 345
Walsh, J. W	1
Young, R. S.	657

INDEX

Federal Railroad Administration

General Discussion:
  Conrail: Page
    Abandonment Covenant 55
    Allen and Company Conrail Bid 42
    Ann Arbor Railroad 56
    Capital Needs on Divested Lines 108
    Captive Shipper Legislation 217
    Captive Shippers 127
    CBO Analysis of Conrail Sale 84, 215
    Closed Bidding 37
    Coal Rates 128
    Conrail Earnings/Cash Flow Projections 42, 81
    Conrail Future Abandonments 112
    Conrail Legislation Timetable 56
    Conrail Management 36
    Conrail Net Income 33
    Conrail Price 32
    Conrail Response to FRA 113
    Conrail Sale Effect on Illinois 71
    Conrail Stand Alone Viability 81, 112
    Conrail's Financial Performance 32
    Declining Conrail Freight Traffic 38
    Divestiture to Guilford 73
    Divestiture to P&LE 73
    Ensuring Competition 110
    Fair Price for Conrail 37
    Finalization of Divestiture 108
    Future Conrail Abandonments 54
    Future Conrail Traffic Projections 39
    Grand Truck Negotiations 111
    Guilford Strike 222
    Guilford Viability 72
    ICC Evaluation of Norfolk-Southern 216
    ICG-Norfolk-Southern Negotiations 72
    ICG Response to FRA 74
    Illinois Rail Competition 74
    Justice Department Reliance of Expert Advice 93
    Linkage of Conrail and CURE Legislation 128
    Michigan DOT Position on Conrail 222
    Morgan Stanley Bid Deficiencies 34
    Norfolk Southern Capital Investment Plan 55
    Norfolk Southern Divestiture Plan 93

Page

General Discussion—Continued

Conrail—Continued

Norfolk Southern Viability 216
Optimistic Traffic Projections 42
P&LE Stock 110
P&LE Viability 108
Preliminary Approval of Divestiture Plan 92
Price as First Consideration 35
Purchase Price Reassessment 80
Rail Restructuring After Sale 217
Southern Michigan Rail Freight Competition 221
Status of Route Protection Negotiations 110
Timing of Conrail Sale 53
Traffic Diversion Estimates 111
Union Pacific Interest in Conrail 214
Use of Conrail Sale Funds 222
Western Railroad Merger 36, 215
Further Rail Deregulation 129
ICC Sunset 129, 130
Local Rail Service Assistance 220

Northeast Corridor:

Boston South Station Project 221
Northeast Corridor Project Administration 220

Railroad Safety:

Accident Prediction Index 66
Accuracy of Drug Tests 134
Action Following Positive Drug Test 142
Alcohol and Drug Rule 80, 136
Alcohol and Drug Rule Challenge 130
Alcohol and Drug Rule Enforcement 141
Alcohol and Drug Rulemaking Delay 140
Alcohol and Drug Rule Safety Impact 141
Amtrak Radio Communications Problems 186
Assignment of Crew Responsibilities 184
Brake Tester Rulemaking 202
Brake Testing Equipment 201
Cost-Benefit Justification for Rulemaking 187
Crew Size on Freight Trains 182
Discretionary Issuance of Penalty Assessments 208
Emergency Response Guide 212
Employee Safety Emphasis 213
FRA Action on Radio Communications 185
Future Grade Crossing Improvements 189
Grade Crossing Accident Statistics 70
Grade Crossing Data Base 193
Grade Crossing Fatalities 57
Grade Crossing Fines 68
Grade Crossing Gate Delays 194
Grade Crossing Maintenance Standards 193, 194
Grade Crossing Safety Earmarked Funds 192
Grade Crossing Safety Education 190, 213
Grade Crossing Safety Program Goals 192
Grade Crossing Safety Publicity 69, 70
Grade Crossing Safety Statistics 190

Page

General Discussion—Continued

Railroad Safety—Continued

High Speed Rail Studies 67
Hollow Axle Problems 197
Locomotive Cab Equipment 187
Mandatory Defect Correction Reports 206
Night Visibility 191
NTSB Cooperation 181
Operation Lifesaver 192
Penalty Amounts 209
Penalty Assessment Administrative Processing 208
Penalty Assessment Variances 207
Philadelphia Bridge Repair Funding 199, 201
Philadelphia Commuter Rail Safety 195
Philadelphia Commuter Rail System Condition 200
Pre-Employment Screening 134
Radio Communications Deficiencies 185
Rail-Highway Crossing Safety Report 212
R&D Study of Grade Crossings 66
Regional Grade Crossing Conferences 195
Revised Safety Program Goals 203, 205
Safety Data Improvement 210
Safety Defect Follow-up 205b
Safety Inspector Workforce 205a
Safety Review Task Force Report 143
SEPTA Cooperation 197
SEPTA Safety Assessment Summary 199
SEPTA Signal Problems 198
Tank Car Approval and Design 211
Tank Car Head Shield Protection 186
Track Buckling 189
Trespasser Accidents 203
Trespasser Fatality Increases 204
R&D Funding Reduction 220

Justifications:

Administration:

A-76 Review—ADP Services 236
Chief Counsel Positions 238
Communications, Utilities and Other Rent 240
Computer Operations Consolidation 236
Largest Contracts 241
Merger of Budget Accounts 225
Office of the Administrator Staffing 236
Office Space 228
Other Personnel Compensation 239
Overseas Travel 223
Part-Time Employment 239
Political Appointees 233
Reduction-in-Force 239
SES Bonus Awards 230
Standard Level User Charges 228
Travel Funding 239
Working Capital Fund 232
Authorizing Legislation 223

Page

Justifications—Continued
  Conrail Labor Protection:
    Conrail Assumption of Labor Protection Payment 286
    Conrail Labor Protection Transfer 287
    Labor Protection Unobligated Balances 291
    Section 701 Funding Status 288
    Section 702 Obligations 288
  Federal Assistance:
    FFB Direct Loans 341
    Fiscal Year 1986 Rescission 341
    Financial Assistance Annual Report 313
    Financial Assistance Program Termination 291
    LRSA Discretionary Grants 302
    LRSA Entitlements 297
    LRSA Obligation/Allocations 292
    LRSA Obligations 299
    LRSA/Section 511 Authorization Status 223
    Preference Share Financing Data 336
    Redeemable Preference Share Earmarked Projects 306
    Redeemable Preference Share Obligations 307
    Redeemable Preference Share Project Summary 307
    Responsiveness 341
    Section 505 and 511 Applications 313
    Section 511 Commitments 313
  Labor Management Projects 244
  Northeast Corridor Funding Rescission 343
  Railroad Safety:
    Accident Trends 282
    Additional Safety Positions 284
    ATIP Vehicles 285
    Best Accident Records 271
    Civil Penalty Assessments 282
    Federal Inspector Staffing 279
    Federal Support of State Inspectors 278
    Inspection Data 267
    Inspection Resource Allocation 271
    Inspector Travel Funding 282
    Offsetting Collections 284
    Post Sequestration State Grant Obligations 226
    Rail Casualty and Accident Data 260
    Railroad Safety Record 260, 272
    Rail Safety Reprogramming 226
    Rail Safety Reprogramming Options 227
    Rail Safety Sequestration 225
    Recovery of Prior Year Funds 284
    Reduction in State Inspectors 226
    Rule Making Summary 272
    State Grant Termination Effect on Safety 278
    State Inspector Breakdown 276
    State Inspector Matching Requirements 278
    State Inspectors 273
    State VS. Federal Inspector Activity 278
    System Safety Assessments 267
    System Safety Plan Goals 273

Page

Justifications—Continued
- Railroad Safety—Continued
  - Track Safety Research 286
  - Train Accident Data 265
  - Train Accidents by State 282
  - Worst Accident Record 272
- Research and Development:
  - Earmarked Research Projects 288
  - Pueblo Test Center Funding 286
  - R&D Funding Reduction 285
- Union Station:
  - Amtrak Investment in Union Station 257
  - AOC Site Uses 259
  - Repayment of Amtrak Investment 259
  - Union Station Federal Revenues 255
  - Union Station Funding Requirements 246
  - Union Station Parking Revenues 254
  - Union Station Profit Income 254
  - Union Station Redevelopment Plan 259
  - Union Station Rehabilitation Requirements 246
  - Union Station Rent Increases 254
  - Union Station Sublease Agreement 246
- USRC:
  - USRC Administrative Costs 255
  - USRC Staffing 256

Interstate Commerce Commission

GENERAL DISCUSSION

- Attrition Rate 679
- Biography of Chairman Gradison 660
- Boston Regional Office 681
- Boxcar:
  - Agreement Authority 791
  - Compromise Proposal 790
  - Decision 790
  - Deregulation 748, 790
- Captive Shipper Rate Reasonableness 699
- Chairman's Conflict of Interest 787
- Chairman's Major Priorities 682
- Closing Remarks 818
- Coal Rates 697
  - Constrained Market Pricing 699
  - Electrical Utility Rates 698
  - Guidelines 698
  - Production Prices 700
- Commissioner Cooperation 678
- Conrail Traffic Diversion Study 787, 788
- Deregulation Legislation 676, 682
- Field Reorganization 680
  - First Year Cost 680
  - Rationale 680
- Furlough Impact—1985 683

Page

Gramm-Rudman:
- Cut Impact 690
- Schedule Impact 678

Insurance Problem 677, 692
- Federal Role 692
- ICC Role 677
- Oversight 693
- Rulemaking 693

ICC Sunset 699, 676
- Impact on Employees 679
- Schedule 682

Long/Cannon Amendment 748

Motor Carrier:
- Data Collection 695
- Operating Revenue 674

NIT League—AAR Joint Rate Agreement 762

Opening Remarks:
- Budget FY 1987 658
- Deregulation Legislation 657
- Directed Rail Service 659
- Staff Resources 658

Operating Authority:
- Revocations Last Year 694
- Safety Criteria 695
- Safety Enforcement 696
- Safety Revocations 694

Privatization of ICC Activities 671

Questions submitted by:
- Congressman Conte 680
- Congressman Pursell 790

Rail Abandonment 784
- Data 784
- New York City 787

Railroad and Motor Carrier Income Taxes 720

Railroad Mergers:
- Santa Fe-Southern Pacific 788
- Trend 789

Railroads:
- Class 1 Earnings 709
- Class 1 Revenue Adequacy 707
- Market Dominance Guidelines 723
- Return on Net Investment 705

Regulatory independence 670

Safety:
- Motor Carrier 676, 690
- Status of Fitness Procedure 695

Shipper Protection 697

Staggers Act 683
- Revision 696

Statement of Chairman Gradison 662

Trucking:
- Benefits of Regulation 670
- Deregulation and New State Regulations 691
- Deregulation and Service to Small Communities 691

Page

- Trucking—Continued
  - Economic Health of Industry 671
  - Economic Impact of Deregulation 672
  - Economic Performance 673
  - Failures of Interstate Carriers 691
  - Numbers of Interstate Carriers 690
  - Tonnage Index 673
- Uniform Rail Costing System 789
- Witnesses 657

BUDGET JUSTIFICATIONS

- Elimination of Field Audits 795
- Gramm-Rudman Impact 796, 797
- ICC Sunset and Rail Function Scope 798
- Office Space:
  - Cost Date 818
  - Space Per Employee 818
- Offices:
  - Commissioners and Their Offices 795, 804
    - Satellite Office Staffing 805
    - Staff 804
    - Staffing 804
    - Staffing Projection 805
  - Compliance and Consumer Assistance 809
    - Compliance Surveys and Roadchecks 813
    - Cost Savings 813
    - Reorganization Data 809
    - OCCA Staff Reduction 813
    - Travel Funds 814
    - Workload Data 811
    - Workload Impact of Market Strategies 811
  - Hearings 807
  - Managing Director: Contracts 814
  - Public Assistance 795
    - Staffing Increase 800
  - Secretary 806
    - Insurance Workload 807
    - Resource Requirements 807
  - Special Counsel: Functions 795
  - Transportation Analysis: Contracts 808
- Onboard Employment 801
- Organization Chart 802
- Other Expenses:
  - Commissioners 806
  - Furniture and Equipment 815
  - Micro Computer Purchases 815
  - Other Services 817
- Overseas Travel 804
- Personnel Compensation and Benefits 801
- Rail Resources 797
- Reprogramming Request 791
- Staffing Reduction:
  - Attrition Rate 801
  - OCCA and Accounts 799

Page

- Staffing Reduction—Continued
  - Reductions in Force 800
- Travel 816

DIRECTED RAIL SERVICE

- Opening Remarks 659
- Statement of Chairman Gradison 667

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

GENERAL QUESTIONS

- Atlantic City Rail Project:
  - Certification 565
  - Completion Schedule 568
  - Costs & Funding 568
- Attleboro-Hyannis Project 580
- Auto Train 559, 576
- Budget Reconciliation Act of 1985:
  - Amtrak Reauthorization 555
  - Auto Train Provision 559
  - Summary 556, 575
- Cost Cutting Measures:
  - Auto Train 420, 424
  - Consolidate Maintenance Facilities 419, 424
  - Fare Policy 424
  - Food Service 419, 423
  - 403(b) and (d) Trains 420, 425
  - Frequency and Route Changes 419, 422
  - Fully Allocated Freight Costs 420, 426
  - Police Force 426
  - Reservation System 419, 423
  - Retirement System 419, 424
  - Sleeper Surcharge 420, 424
  - Track and Station Reductions 420, 426
  - Wage Freeze 419, 422
  - Work Rules 419, 423
- Customs and Immigration Inspection 575
- Elimination of Amtrak:
  - Communities Left Without Service 411
  - Contingency Plan 417
  - Employee Morale 573
  - Federal Subsidy of Other Modes 578
  - Impact on Air Travel in Northeast 579
  - Impact on Commuter Agencies 410
  - Passenger Profile 578
- Federal Policy on Amtrak:
  - Budget Deficit 416
  - Budget Priorities 416
  - Federal Responsibility 407, 410
  - Interstate Compact 409
  - Percent of Total Budget 411
  - Transfer to States 406
- FY 1987 Amtrak Funding Level
  - Amtrak Budget Request 561

Page

- FY 1987 Amtrak Funding Level—Continued
  - Capital Budget 576
  - Deferred Maintenance 562
  - DOT Budget Request 560
  - FRA Budget Assumptions 561
  - FRA Budget Request 559, 574
  - Graham-Rudman Impact 416, 417, 578
  - Minimum Funding Request 561
- Federal Employee Travel 577
- Labor:
  - Employee Dismissal 439
  - Minimum Force Agreements 437
  - NEC Work Rules 429
  - Negotiations 428
  - 100-Mile Rule 429
  - Productivity Improvements 575
  - Report on Status of Negotiations 431
  - Reservation Sales Offices 430
  - Train and Engine Crew Takeover 574
- Opening Remarks:
  - Amtrak 345
  - Federal Railroad Administration 378
- Pub Car 574
- Safety:
  - 1985 Record 569, 570
  - Passenger Injuries and Fatalities 569
  - Recommendations 569, 570
  - Weather Alert Procedures and Standards 571, 573
- Statement for the Record:
  - W. Graham Claytor, Jr 347
  - John H. Riley 380
- Stations:
  - Philadelphia 30th Street 564
- Tax-Exempt Bonds 563

JUSTIFICATION

- Capital:
  - Equipment Expenditures 651, 652
  - FY 1986 Program 645
  - FY 1987 Request 643
  - Maintenance Facilities 652
  - Minimum Requirements 615
- Depreciation 622, 636
- Funding History:
  - Appropriations 613
  - Operating Grants 612
- General and Administrative Expenses 637
- General Support Expenses 636
- Gramm-Rudman Reduction 615
- Maintenance:
  - Equipment 627
  - Facilities 628
  - Right-of-Way 628
  - Stations/On-Board Services 653

Page
Marketing and Reservations 635
Northeast Corridor Improvement Project 654
On-Board Services 629
Operating Expenses:
  Contract Railroads 624
  Expenses Not Requiring an Appropriation 622
  Inflation 622
  Labor Negotiations 615
  Train Operations 623
  Wage/Price Increase 623
Performance Measures:
  Complaints 609
  Constant Dollars Federal Subsidies 611
  On-Time 600, 608
  Passenger Mile Per Dollar of Federal Support 607
  Revenue 606
  Revenue/Cost Ratio 598, 599, 605
  Ridership 600, 601
  Track Slow Orders 610
Revenue 643
Right-of-Way 653
Route System:
  Basic System Service Changes 594
  403 (b) and (d) Service Changes 595
  403 (b) and (d) Statistics 595
  Review 580
  Statistics 590
Stations:
  Capital Improvements 632, 633
  Personnel Wages 631
  Staffing 630, 631
Systems/Support 654

United States Railway Association

GENERAL DISCUSSION

Accuracy of Divestiture Studies 895
Adequacy of Cash Flow 840
Amount of Conrail Cash Being Purchased 916
Cash Flow as Financial Indicator 839
Cash Flow Performance 839
CBO Analysis 862
Class I Operating Ratios 891
Class I Railroad Earnings 863
Coal Shipments Through Philadelphia 894
Competitive Impacts 823
Concluding Remarks 918
Conflict of Interest 895
Conrail Abandonment Plans 841
Conrail Consolidates Financial Statements 868
Conrail Employee and Service Levels 854
Conrail Freight Employment 891
Conrail Future Viability 839
Conrail Net Income 862

Page
Conrail 1986 Earnings Estimate 866
Conrail Operating Expenses 885
Conrail Productivity 891
Conrail Profit and Loss History 864
Conrail Revenue By Commodity 887
Conrail Sources and Uses of Funds 889
Conrail Ton-Miles By Commodity 868
Conrail Tonnage 855
Conrail Tonnage Per Employee 892
Conrail Traffic Projections 853
Conrail Traffic Volume 834
Conrail Viability 823
Delay Impact 838
Delay in Decision Making 821
Differences in Cash Flow Estimate 841
Future Shrinkage of Conrail's System 835
Guilford and P&LE Financial Strength 860
Guilford and P&LE Survival 862
Guilford and P&LE Viability 837
Higher Selling Price 832
Impact on the State of Illinois 836
Morgan Stanley Capital Investment Plans 857
Morgan Stanley Dividend Plans 858
Morgan Stanley Use of Cash Reserves 857
NERSA Profitability Determination 834
New York Port Authority Position 896
North-South Rate Divisions 852
North-South Route Weaknesses 851
North-South Traffic Diversions 851
Opening Remarks 821
Prepared Statement 823
Price Concessions 836
Property Sales Impact on Cash Flow 840
Public Offering Structure 860
Questionable Selling Tactics 833
Real Property Sales 836
Recognition of Hon. John J. McFall 832
Reestimation of Price 833
Response to Congressman Oxley 897
Revenue Ton-Mile Index 866
Status of USRA Divestiture Review 861
USRA Activities 822
USRA Coordination with Justice Department 862
USRA Divestiture Evaluation Criteria 861
USRA Forecasting Accuracy 855
Wage Rate Differential Savings 894
Western Railroad Merger 852

BUDGET JUSTIFICATIONS

Administrative Costs 917
Computer Disposition 917
Gramm-Rudman Impact 916
Justifications For Continuation of USRA 916
Litigation Costs 918

Page
Personnel Skills Mix 917
Sunset of USRA 916
USRA Staffing 916

○